

# NORTH CAROLINA



## REGISTER

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

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

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
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15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
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		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2004 – December 2004

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 <sup>th</sup> day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
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18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
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19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
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19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

## 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**  
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.

**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.

*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.*

**NORTH CAROLINA BUILDING CODE COUNCIL**

**Notice of Rule-making Proceedings** is hereby given by the NC Building Code Council in accordance with G.S. 150B-21.5(d).

**Citation to Existing Rule Affected by this Rule-Making:** *NC Accessibility Code, NC Building Code, and NC Mechanical 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:** *June 7, 2004, 1:00 pm, NC Department of Insurance, 322 Chapanoke Road, Raleigh, NC*

**Comment Procedures:** *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, c/o NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603.*

**Comment period expires:** *June 7, 2004*

**Statement of Subject Matter:**

**1. MAKE GENERAL CLARIFICATIONS AND MODIFICATIONS TO The Accessibility Code TO MAKE IT COMPLY WITH AMERICANS WITH DISABILITIES ACT REQUIREMENTS FOR APPROVAL BY THE US DEPARTMENT OF JUSTICE.**

This code change is proposed to allow for certification of the NC Accessibility Code by USDOJ.

**2. REVISE SECTION 305.2 OF THE NORTH CAROLINA FUEL GAS CODE AS FOLLOWS:**

**305.2 Elevation of ignition source.** Equipment and appliances having an ignition source shall be elevated such that the source of ignition is not less than 18 inches (457 mm) above the floor in hazardous locations and public garages, private garages, repair garages, motor fuel-dispensing facilities and parking garages. For the purpose of this section, rooms or spaces that are not part of the living space of a dwelling unit and that communicate directly with a private garage through openings shall be considered to be part of the private garage.

**Exception:** Elevation of the ignition source is not required for appliances that are listed as flammable vapor resistant and for installation without elevation.

This code change is proposed to allow for new industry listings.

**3. ADD A NEW SECTION 608 TO THE NORTH CAROLINA MECHANICAL CODE AS FOLLOWS:**

**SECTION 608**  
**FABRIC AIR DISTRIBUTION DEVICE**

**608.1 General.** Fabric air distribution devices are supply air distribution systems operating under positive pressure. Air distribution occurs through any combination of permeable fabric, linear perforated vents, linear mesh vents or orifices. The systems consist of circular, semi-circular or quarter circle sections ranging from 6 inches to 84 inches joined together with zippers. Fittings include elbows, transitions, reducers, saddle-T's, and end caps.

**608.2 Material.** The materials shall have a flame-spread index not exceeding 25 and a smoke-developed index not exceeding 50. Fabric shall meet the criteria as set forth in Section 4.0 of the ACCEPTANCE CRITERIA FOR FABRIC AIR DISPERSION SYSTEMS (AC167 dated July 2000) by ICBO Evaluation Service, Inc. Product must be listed by UL as "Distribution Devices, Air" and be tested by an ICBO Evaluation Service accredited independent testing laboratory (or other third party code evaluation service acceptable to NCDIOI) that the material is in accordance with the ACCEPTANCE CRITERIA FOR FABRIC AIR DISPERSION SYSTEMS (AC167 dated July 2000).

**608.3 Design.** The fabric air dispersion system shall be designed in accordance with the manufacturer's design guide or design manual. The design shall be documented in such a way as to be verifiable by the AHJ if requested by that AHJ. Design criteria shall include, but not be limited to, fabric air distribution device sizing, length, and support system, vent or orifice location and sizing, and system supply flow rates. Maximum air temperature, velocity, pressure and fabric permeability shall be taken into consideration.

**Exception:** The fabric air dispersion system may be designed by a licensed design professional in lieu of the above.

**608.4 LIMITATIONS:**

**608.4.1** The use of the fabric air dispersion system shall be those imposed by the evaluation report(s) for that manufacturer's product and by all North Carolina Mechanical Code requirements that may apply.

**608.4.2** Product installation and supports shall comply with the manufacturer's installation instructions and the requirements of North Carolina Mechanical Code Chapter 6 and the approved evaluation report(s).

**608.4.3** Product shall not pass through any fire-rated construction or penetration.

**608.4.4** Product shall be used for positive pressure air distribution only. Negative pressure uses (i.e., return or exhaust air) are prohibited.

**608.4.5** Product shall be used in exposed interior locations only, and cannot be concealed from view by building walls, partitions, floor/ceiling assemblies, or roof.

**608.4.6** Clearance from combustibles shall be in accordance with the manufacturers installation instructions or North Carolina Mechanical Code Chapter 3, as applicable

**608.4.7** Maximum positive pressure differential shall be limited to 3.1 inches of water column or the maximum positive pressure differential of that manufacturer's product, whichever is less.

**608.4.8** Periodic cleaning and maintenance shall be in accordance with the manufacturer's recommendations. Mechanical duct cleaning means are prohibited.

**608.4.9** Documentation shall be provided from the AHU manufacturer that using this product will not adversely affect the operation of the AHU.

**608.4.10** Fabric air dispersion systems shall meet the requirements of North Carolina Mechanical Code paragraph 309.1.

This code change is proposed to allow for fabric air distribution devices.

**4. ADD A NEW SECTION 603.1.1 TO THE NORTH CAROLINA MECHANICAL CODE AS FOLLOWS:**

**603.1.1** Nothing in this section shall be deemed to preclude the use, within a conditioned space, of a duct system that combines the functions of air transport and air diffusion provided that the materials used in the said duct system have a fire spread/smoke developed rating not greater than 25/50.

This code change is proposed to allow for fabric air distribution devices.

**5. REVISE SECTION R307.2.2 OF THE NORTH CAROLINA MECHANICAL CODE AS FOLLOWS:**

**307.2.2** Drain pipe materials and sizes. Components of the condensate disposal system shall be cast iron, galvanized steel, copper, polybutylene, polyethylene, ABS, CPVC or PVC pipe or tubing. All components shall be selected for the pressure and temperature rating of the installation. Condensate waste and drain line sizes shall not be less than ¾-inch (19 mm) internal diameter and shall not decrease in size from the drain pan connection to the place of condensate disposal, except that condensate drain lines in attics and under-floor spaces of one- and two-family dwellings shall be at least 1 inch inside diameter. Where the drain pipes from more than one unit are manifolded together . . .

This code change is proposed to improve condensate drainage flow.

**6. ADD DEFINITIONS TO SECTION R202 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**"Dampproofing.** A coating or the application of coatings applied that is intended to prevent the penetration of water vapor and moisture through or into walls or into interior spaces".

**"Waterproofing.** A coating or application of coatings applied that is intended to prevent the penetration of water under hydrostatic pressure through or into walls or into interior spaces".

This code change is proposed for clarification.

**7. REVISE SECTION R311.4 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R311.4 Hallways and Interior Doors.** The minimum width of a hallway shall not be less than 3 feet (914 mm). All doors from habitable rooms shall be a minimum nominal 2'-6" x 6'-8".

This code change is proposed to set a minimum for doors in a means of egress.

**8. ADD TO TABLE 602.3. (1) OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**TABLE 602.3(1)  
FASTENER SCHEDULE FOR STRUCTURAL MEMBERS**

DESCRIPTION OF BUILDING ELEMENTS	NUMBERS AND TYPE OF FASTENERS	SPACING OF FASTENERS
<u>Ledger Strip</u>	<u>3-16d common</u> <u>4 – 3" x 0.131" nail</u> <u>4 – 3" 14 gage staple</u>	<u>Face nail at 2" on center under each joist</u>

This code change is proposed to provide prescriptive nailing requirements for ledger strips.

**9. REVISE SECTION R613.1 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**General.** This section prescribes performance and construction requirements for exterior window systems installed in wall systems. Waterproofing, sealing and flashing systems are not included in the scope of this section. See section 703.8 for flashing requirements.

This code change is proposed for cross reference.

**10. REVISE SECTION R614.1 IN THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R614.1 Side Hinge and Garage Doors.** Exterior side hinge doors and garage doors shall have a structural design pressure rating as required by ~~Table 301.2(4)~~ Table 301.2(5) or Section 4402. These doors are not required to be rated for water resistance nor air infiltration.

This code change is proposed for cross reference.

**11. ADD THE FOLLOWING TO SECTION R 602.10.5 AND FIGURE R602.10.5 (2) OF THE NORTH CAROLINA RESIDENTIAL CODE:**

**R602.10.5** Continuous structural panel sheathing.  
(Add the following after the first paragraph.)

**Exception:** Vertical wall segments in one story or first story of two story buildings next to garage openings shall be permitted to have a 6:1 height-to-width ratio (with height being measured from top of header to sill plate) when constructed in accordance with the following provisions. Each panel shall have a length of not less than 16 inches (406 mm) and a height of not more than 10 feet (3048 mm). Each panel shall be sheathed on one face with a single layer of 3/8-inch-minimum-thickness (9.5 mm) wood structural panel sheathing nailed with 8d common or galvanized box nails in accordance with Figure R602.10.5 (2). The wood structural panel sheathing shall extend up over the solid sawn or glued-laminated header and shall be nailed in accordance with Figure R602.10.5 (2). The header shall extend between the inside faces of the first full-length outer studs of each panel. The clear span of the header between the inner studs of each panel shall be not less than six feet (1829 mm) and not more than 18 feet (5486 mm) in length. A strap with an uplift capacity of not less than 1000 pounds (454 kg) shall fasten the header to the side of the inner studs opposite the sheathing. Two anchor bolts shall be installed in accordance with Section R403.1.6, and plate washers shall be a minimum of 2 inches by 2 inches by 3/16 inch (51 mm by 51 mm by 4.8 mm) thick and shall be used on each bolt. This exception is only permitted in Seismic Design Categories A-C.

(Diagram will be included in final action.)

This code change is proposed to allow for alternate braced wall construction.

**12. ADD NEW SECTIONS REGARDING CLOSED CRAWL SPACES IN THE NORTH CAROLINA RESIDENTIAL CODE.**

This code change is proposed to allow for alternate systems of crawl spaces without natural ventilation.

**13. REVISE TABLE R703.4 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**Table R703.4  
Weather-Resistant Siding Attachment and Minimum Thickness**

Siding Material	Nominal thickness <sup>a</sup> (inches)	Joint treatment	Sheathing Paper Required	Type of supports for the Siding Material & Fasteners
Brick Veneer	2	Section R703	Yes (m)	See section R703 and Figure R703.7 <sup>h</sup>
Concrete Masonry veneer	2			

Delete footnote m: ~~for masonry veneer, a weather-resistant membrane or building paper is not required over water-repellent sheathing materials when a 1-inch air space is provided between the veneer and the sheathing. When the 1-inch space is filled with mortar, a weather-resistant membrane or building paper is required over studs or sheathing.~~

This code change is proposed to improve brick veneer drainage.

**14. REVISE SECTION R703.8 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R 708.3 Flashing.** Approved corrosion-resistive flashing shall be provided in the exterior wall envelope in such a manner as to prevent the entry of water into the wall cavity or penetration of water to the building structural framing components, Install flashing per ASTM E 2112 *Standard Practice for Installation of Exterior Windows, Doors and Skylights*, or in accordance with manufacturer's instructions. Aluminum flashing may not be used in contact with cementitious material, except at counter flashing. The flashing shall extend to the surface . . .

(Include a reference to the standard in Chapter 43 – References.)

This code change is proposed for cross reference.

**15. REVISE SECTION R703.7.4.2 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R703.7.4.2 Air Space.** The veneer shall be separated from the sheathing by an air space of a minimum of nominal 1 inch (25.4 mm) air space but not more than 4.5 inches (114 mm). ~~The weather-resistant membrane or asphalt-saturated felt required by Section R703.2 is not required over water-repellent sheathing materials.~~

This code change is proposed to improve brick veneer drainage.

**16. REVISE SECTION R903.3 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R903.3 Coping.** Parapet walls shall be properly coped with noncombustible, weatherproof materials of a width no less than the thickness of the parapet wall. Parapet coping shall extend 2 inches minimum down the faces of the parapet.

This code change is proposed to improve veneer flashing.

**17. REVISE SECTION R905.2.8.3 OF THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**R905.2.8.3 Crickets and saddles.** A cricket or saddle shall be installed on the ridge side of any chimney greater than 30 inches (762 mm) wide. Cricket or saddle covering shall be sheet metal or of the same material as the roof covering. Provide flashing at the intersection of the cricket or saddle and the chimney. See Section 703.8.

This code change is proposed for cross reference.

**18. REVISE TABLE 4402(b) IN THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**TABLE 4402(b)  
DESIGN PRESSURES IN PSF FOR GARAGE DOORS <sup>1,2,3,4,5,6</sup>**



**POSITIVE AND NEGATIVE IN PSF**

**9x7 Doors**

Velocity (mph)	Mean Roof Height (ft)		
	15	25	35
<u>110</u>	<del>20</del> + <u>19.1</u> - <del>21.6</del>	<del>23</del> + <u>19.1</u> - <del>21.6</del>	<del>26</del> + <u>20.0</u> - <del>22.6</del>
<u>120</u>	<del>25</del> + <u>22.8</u> - <del>25.8</del>	<del>29</del> + <u>22.8</u> - <del>25.8</del>	<del>32</del> + <u>23.8</u> - <del>26.9</del>
<u>130</u>	<del>30</del> + <u>26.7</u> - <del>30.2</del>	<del>35</del> + <u>26.7</u> - <del>30.2</del>	<del>39</del> + <u>27.9</u> - <del>31.5</del>

**16x7 Doors**

Velocity (mph)	Mean Roof Height (ft)		
	15	25	35
<u>110</u>	<u>+ 18.3</u> - <del>20.4</del>	<u>+ 18.3</u> - <del>20.4</del>	<u>+ 19.1</u> - <del>21.3</del>
<u>120</u>	<u>+ 21.8</u> - <del>24.3</del>	<u>+ 21.8</u> - <del>24.3</del>	<u>+ 22.8</u> - <del>25.4</del>
<u>130</u>	<u>+ 25.6</u> - <del>28.5</del>	<u>+ 25.6</u> - <del>28.5</del>	<u>+ 26.7</u> - <del>29.8</del>

1. The pressures in this table are for garage doors at least ~~9 ft x 7 ft~~ and at least 2 ft from a corner.
2. Alternate design pressures may be determined by using the North Carolina State Building Code General Construction, ASCE 7-98 or the 2000 International Building Code.
3. For doors in a structure with a roof slope of 10 degrees (2:12) or less from the horizontal the pressures from this table may be multiplied by ~~0.90~~ 0.92.
4. Design pressure ratings based on tests done according to ASTM E330 or ANSI/DASMA 108 are adequate documentation.
5. Garage doors on the ground level of a structure in a flood zone do not have to meet the above design pressures provided all of the following conditions are met:
  - Structure is anchored to the girders and top of the piling to resist the forces given in Chapter 44. The garage door occurs below the top of the piling.
  - Provide openings at the garage level that comply with either of the following options:
    1. Design all exterior walls at the garage level to break away at 20 psf or less or:
    2. Provide openings (in walls at the garage level without the garage door) equal to at least 20% of the total wall area from the ground to the roof.
6. Design pressures are based on Exposure B condition.
  - a. For 15' mean roof height, multiply by 1.21 for Exposure C values and by 1.47 to get Exposure D values
  - b. For 25' mean roof height, multiply 1.34 for Exposure C values and by 1.60 to get Exposure D values
  - c. For 35' mean roof height, multiply 1.38 for Exposure C values and by 1.63 to get Exposure D values

This code change is proposed to allow for lower design pressures based on exposure.

**19. ADD A NEW TABLE 301.2(5) IN THE NORTH CAROLINA RESIDENTIAL CODE AS FOLLOWS:**

**TABLE 301.2(5)  
DESIGN PRESSURES FOR GARAGE DOORS<sup>1,2,3,4,5,6</sup>  
POSITIVE AND NEGATIVE IN PSF**

**9x7 Doors**

Velocity (mph)	Mean Roof Height (ft)		
	15	25	35
90	+ 12.8 -14.5	+ 12.8 -14.5	+ 13.4 -15.1
100	+ 15.8 -17.9	+ 15.8 -17.9	+ 16.5 -18.7

**16x7 Doors**

Velocity (mph)	Mean Roof Height (ft)		
	15	25	35
90	+ 12.3 -13.7	+ 12.3 -13.7	+ 12.8 -14.3
100	+ 15.2 -16.9	+ 15.2 -16.9	+ 15.8 -17.6

1. The pressures in this table are for garage doors at least 2 ft from a corner.
2. Alternate design pressures may be determined by using the North Carolina State Building Code General Construction, ASCE 7-98 or the 2000 International Building Code.

3. For doors in a structure with a roof slope of 10 degrees (2:12) or less from the horizontal pressures from this table may be multiplied by 0.92.
4. Design pressure ratings based on tests done according to ASTM E330 or ANSI/DASMA 108 are adequate documentation.
5. Garage doors on the ground level of a structure in a flood zone do not have to meet the above design pressures provided all of the following conditions are met:
  - a. Structure is anchored to the girders and top of the piling to resist the forces given in Chapter 44.
  - b. The garage door occurs below the top of the piling.
  - c. Provide openings at the garage level that comply with either of the following options: 1. Design all exterior walls at the garage level to break away at 20 psf or less or:
  - d. Provide openings (in walls at the garage level without the garage door) equal to at least 20% of the total wall area from the ground to the roof.
6. Design pressures are based on Exposure B condition.
  - a. For 15' mean roof height, multiply by 1.21 for Exposure C values and by 1.47 to get Exposure D values
  - b. For 25' mean roof height, multiply by 1.34 for Exposure C values and by 1.60 to get Exposure D values
  - c. For 35' mean roof height, multiply by 1.38 for Exposure C values and by 1.63 to get Exposure D values

This code change is proposed to allow for lower design pressures based on exposure.

**20. INCLUDE REFERENCE TO THE DASMA GARAGE DOOR WIND LOAD GUIDE IN THE NORTH CAROLINA RESIDENTIAL CODE:**

This code change is proposed for cross reference.

**U.S. Department of Justice**

Civil Rights Division

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JDR:TCH:RJD:par  
DJ 166-012-3  
2004-0791

*Voting Section – NWB.  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530*

March 25, 2004

Susan K. Nichols, Esq.  
Special Deputy Attorney General  
9001 Mail Service Center  
Raleigh, NC 27699-9001

Dear Ms. Nichols:

This refers to the February 16, 2004, Order of the State Board of Elections, which provides the procedures for conducting the rescheduled July 20, 2004, statewide primary and local general elections; and the February 24, 2004, Order of the State Board of Elections, which cancels the 2004 presidential preference primaries, 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 February 24, 2004; supplemental information was received through March 5, 2004.

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. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Chief, Voting Section

**U.S. Department of Justice**

Civil Rights Division

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

March 30, 2004

Via Facsimile and Regular Mail

Tiare B. Smiley, Esq.  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

Dear Ms. Smiley:

This refers to Sections 1 through 4 of Session Law 2003-434 (Extra Session), which provide the 2003 redistricting plans for the North Carolina Senate and House of Representatives, 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 administrative submission on March 30, 2004, requesting expedited consideration based upon the extensive information already provided by the State and otherwise obtained during the discovery process in the Section 5 declaratory judgment action, State of North Carolina v. Ashcroft, Civil Action No. 1:03CV2477 (D.D.C., filed Nov. 26, 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 of the Voting Rights Act (28 C.F.R. 51.41).

Since the Section 5 status of these voting changes is pending before the Court in State of North Carolina v. Ashcroft, we are providing a copy of this letter, as well as the State's submission letter, to the Court and counsel of record in that case.

Sincerely,

R. Alexander Acosta  
Assistant Attorney General

**NOTICE OF REQUEST FOR PERMANENT VARIANCE  
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARD**

**BY**

**NORTH CAROLINA DEPARTMENT OF LABOR**

**Statement of the Subject Matter:** The Commissioner of Labor hereby gives notice that she is considering, in accordance with N.C. Gen. Stat. § 95-132(b), an application for a permanent variance from Commonwealth Constructors, Inc. ("Commonwealth").

**Reason for Proposed Action:** On December 4, 2003, Commonwealth's parent company, Commonwealth Dynamics, Inc., submitted an application for a permanent variance with the United States Department of Labor – Occupational Safety and Health Administration ("OSHA") that exactly duplicates the variance previously granted to Oak Park Chimney Corp. and American Boiler and Chimney Co., and which is contained in 68 Fed. Reg. 52961 (September 8, 2003) ("the Oak Park Chimney Variance"). Commonwealth Dynamics, Inc. has been notified by OSHA that the variance request is being processed, but that during the interim period it will not be cited for non-compliance with the applicable standards provided that the equipment and methods employed are in strict accordance with the Oak Park Chimney Variance.

On March 5, 2004, Commonwealth filed an application for a permanent variance with the Occupational Safety and Health Division of the North Carolina Department of Labor ("OSHNC"). If granted, the permanent variance will allow Commonwealth to utilize the conditions set forth in Section VIII, Items 1 through 16, of the Oak Park Chimney Variance, in lieu of the requirements of 29 C.F.R. 1926 which regulate the tackle used for boatswain's chairs (29 C.F.R. 1926.452(o)(3)), as well as the requirements specified for personnel hoists by 29 C.F.R. 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16). Thereafter, pursuant to Commonwealth's March 25, 2004 request, the Commissioner of Labor issued an Interim Order allowing the aforementioned variance contingent upon Commonwealth's strict adherence to the requirements set forth in the Oak Park Chimney Variance. This Interim Order expires on October 3, 2004, or on the effective date of the permanent variance, if approved, whichever occurs first.

**Authority for Proposed Action:** N.C. Gen. Stat. § 95-132(b); 13 NCAC 7A.0710.

**Comment and Hearing Procedures:** Interested and potentially affected persons or parties are invited to make known their views, comments, information or arguments regarding the permanent variance application and consideration of the granting of the permanent variance. To review the application or to obtain a copy of it, contact Lynette D. Johnson, Assistant Agency Rulemaking Coordinator, at the address below. Affected employees and employers may request a public hearing by filing a written request for a hearing by the close of business on May 10, 2004. Written comments, data or other information relevant to this proceeding should be submitted by the close of business on May 17, 2004. Requests for a hearing and written comments should be submitted to Lynette D. Johnson, Assistant Agency Rulemaking Coordinator, N.C. Department of Labor, Legal Affairs Division, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101. Fax transmittals may be directed to (919) 733-4235.

Barbara A. Jackson  
General Counsel/Agency Rulemaking Coordinator

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

**NODA PROPERTIES, LLC**

Pursuant to N.C.G.S. Section 130A-310.34, NODA Properties, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in the City of Charlotte, Mecklenburg County, North Carolina. The Property is comprised of approximately 3.5 acres located at 2320 North Davidson Street in Charlotte. Environmental contamination exists on the Property in groundwater. NODA Properties, LLC has committed itself to redevelop the Property exclusively for industrial, commercial, retail and residential uses in a mixed-use format. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and NODA Properties, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The new Notice of Intent to Redevelop a Brownfields Property is a second one regarding this Property; it has been filed because NODA Properties, LLC has demonstrated to DENR that land use restrictions on an adjoining parcel are not needed, which led to changes in the proposed Brownfields Agreement and the proposed Notice of Brownfields Property. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Charlotte, Neighborhood Development Key Business, Employment & Business Service, located at 600 East Trade Street, by contacting Carolyn Minnich at that address, at [cminnich@ci.charlotte.nc.us](mailto:cminnich@ci.charlotte.nc.us), or at (704)336-3499; or at 401 Oberlin Road, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919)733-2801, ext. 336. Written public comments and written requests for a public meeting may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. All such comments and requests should be addressed as follows:

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

**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 15A – DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rules 15A NCAC 03R .0201, 03S .0101-.0103 and amend the rules cited as 15A NCAC 03J .0402, 03M .0201, 03O .0503, 03Q .0108-.0109, and 03R .0108.

**Proposed Effective Date:** September 1, 2004

**Public Hearing:**

May 27, 2004 – 7 p.m. – NC Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC

June 3, 2004 – 7 p.m. – Swan Quarter Fire Station, 25 Oyster Creek Road, Swan Quarter, NC

June 10, 2004 – 7 p.m. – Carteret Community College, CMAST Building, 303 College Circle, Room 306, Morehead City, NC

June 17, 2004 – 7 p.m. – Swain Auditorium, 101 Count Street, Edenton, NC

June 24, 2004 – 7 p.m. – DENR, Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, NC

**Reason for Proposed Action:**

**15A NCAC 03J .0402** – A petition for rulemaking was submitted to the NC Marine Fisheries Commission by a group of residents of Spooners Creek. The petition requests that gill nets and seines be banned from Spooners Creek at all times (option 1). Residents of the area claim that conflicts with gill netters using Spooners Creek have been occurring since 1990. After meeting with a group of residents, the Fisheries Director issued a proclamation closing all of Spooners Creek to the use of recreational and commercial gill nets or seines from sunset to sunrise year round. This proclamation will be in force until rescinded or superseded. The NC Division of Marine Fisheries recommends that gill nets and seines be banned in Spooners Creek between sunset and sunrise (option 2). Division staff feels their recommendation would more specifically address the conflict problems.

**15A NCAC 03M .0201, 03O .0503, 03Q .0108 - .0109, 03R .0201** – These rules are being amended in order to implement the Marine Fisheries Commission (MFC) Striped Bass Fishery Management Plan (FMP). The FMP defines an additional management area for striped bass that necessitates several changes in current MFC rules. Additionally, since striped bass are managed by the Wildlife Resources Commission (WRC) and the MFC, rule changes are proposed in order to make rules enforced by both agencies consistent.

**15A NCAC 03R .0108** – The North Carolina General Statutes give the Marine Fisheries Commission (MFC) authority to promulgate rules for the management of marine and estuarine resources in coastal fishing waters including oysters. The

General Statutes also allow the MFC to take steps necessary to develop and improve the cultivation, harvesting and marketing of shellfish in North Carolina from public grounds and private beds. The proposed rule amendment to increase areas limited to hand harvest methods is necessary due to concern over damage to oyster rocks from bottom disturbing harvest gear. The affected areas were identified as part of an exhaustive fishery management plan process. The amendment would help insure a viable long-term oyster fishery.

**15A NCCA 03S .0101-.0102** – In March 2003 Congress authorized a \$35 million federal aid package for shrimpers impacted by excessive foreign imports along the south Atlantic and Gulf coast. Each state was mandated to develop a system to distribute its share of the funds expediently, since the money would only be available for a short period. Temporary rules effective July 1, 2003 were implemented to establish the process for determining eligibility and distributing federal or state funds for economic assistance to the fishing industry. The temporary rules need to be permanent due to the likelihood of the state receiving funds for shrimpers in the future. The distribution of funds would be expedited by this rule being in place.

**15A NCAC 03S .0103** – In early March 2003 Congress authorized a \$5 million federal aid package for assistance to blue crab fisheries impacted by excessive foreign imports along the south Atlantic and Gulf coasts. Each state had to develop a system to distribute its share of the funds expediently, since the money would only be available for a short period. The proposed rule was adopted as an emergency rule to establish the process for determining eligibility and distributing these funds. The proposed permanent rule will establish a process for determining eligibility and distributing economic assistance funds to the blue crab fishery in the future.

**Procedure by which a person can object to the agency on a proposed rule:** If you have any objections to the proposed rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to the following address – Belinda Loftin, P.O. Box 769, Morehead City, NC 28557.

**Written comments may be submitted to:** Belinda Loftin, P.O. Box 769, Morehead City, NC 28557, phone (252)726-7021, email Belinda.loftin@ncmail.net

**Comment period ends:** July 19, 2004

**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 6<sup>th</sup> 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 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES**

**SECTION .0400 - FISHING GEAR**

**OPTION #1**

**15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:
  - (A) Nags Head:
    - (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
      - (I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.
      - (II) From November 1 through December 15.
    - (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.
  - (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
    - (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000'

- N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
- (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.

- (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N - 75° 31.7166' W.

- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:

- (A) Topsail Beach. From January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.

- (B) Surf City:
  - (i) From January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach one-quarter mile from the pier and on the northeast by a line beginning at a point on the beach 750 feet from the pier extending seaward to intersect the offshore boundaries.

- (ii) From July 1 to December 31, those areas around the pier bordered on the offshore side by a line 750 feet from the end of the pier, on the southwest by a line beginning at a point on the beach 750 feet from the pier and on the northeast by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundaries.



**PROPOSED RULES**

- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
    - (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
    - (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
      - (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
        - (I) Strike nets may be used within 900 feet of the beach;
        - (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
      - (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
      - (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to a point on the beach 33°55.0026' N – 77°56.6630' W near the former location of New Inlet during the October surf fishing tournament in Carolina Beach.
  - (4) Pamlico River – Beaufort County. Goose Creek State Park. Commercial fishing gear may not be used from the Friday before Easter through December 31 for the following areas:
    - (A) Within 150 feet of the shoreline within park boundaries;
    - (B) Within the marked channel from Dinah Landing to the mouth of Upper Goose Creek.
- (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
    - (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
    - (B) Within South River.
  - (2) Cape Lookout, Carteret County:
    - (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
    - (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
  - (3) State Parks/Recreation Areas:
    - (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
    - (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
    - (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
  - (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
    - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
    - (B) Canals within Pine Knoll Shores, Carteret County;

- (C) ~~Spooners Creek entrance channel and marina on Bogue Sound, Carteret County;~~ Harbor Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County.
  - (5) Masonboro Inlet. Gill nets and seines may not be used:
    - (A) Within 300 feet of either rock jetty; and
    - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
  - (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
  - (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.
  - (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.
  - (9) Spooners Creek, Carteret County. Gill nets and seines may not be used within Spooners Creek at any time, including the entrance channel, marina and canals.
- (II) From November 1 through December 15.
  - (ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.
  - (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
    - (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
    - (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
  - (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center near Cape Point at a point 35° 12.9000' N - 75° 31.7166' W.

*Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52.*

**OPTION #2**

**15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:
  - (A) Nags Head:
    - (i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:
      - (I) From Wednesday through Saturday of the week of the

- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
  - (A) Topsail Beach. From January 1 through December 31, that area around Jolly Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
  - (B) Surf City:
    - (i) From January 1 to June 30, that area around the Surf City Fishing Pier bordered on the offshore side by a line 750 feet from the end of the



- mile of the shore at Fort Macon State Park, Carteret County.
- (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
- (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
  - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
  - (B) Canals within Pine Knoll Shores, Carteret County;
  - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; Harbor Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within Carolina Marlin Club property adjacent to Newport River, Carteret County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
  - (A) Within 300 feet of either rock jetty; and
  - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.
- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.

- (9) Spooners Creek, Carteret County. It is unlawful to use gill nets and seines between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners Creek proper and the adjoining tributary canals and channels.

*Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52.*

**SUBCHAPTER 03M – FINFISH**

**SECTION .0200 - STRIPED BASS**

**15A NCAC 03M .0201 GENERAL**

- (a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint waters.
- (b) Hook-and-line fishing equipment is not commercial fishing equipment in the striped bass fishery. It is unlawful to sell or purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.
- (c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).
- (d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except:
  - (1) during the open season in internal coastal waters established in 15A NCAC 03M .0202;
  - (2) during any open season established for the Atlantic Ocean in 15A NCAC 03M .0204; or
  - (3) during any open season of another state without possession of the following:
    - (A) A bill of lading as described in 15A NCAC 03I .0114;
    - (B) A numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.
- (e) The management units and recreational fishery management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

*Authority G.S. 113-134; 113-182; 143B-289.52.*

**SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES**

**SECTION .0500 – PERMITS**

**15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

- (a) Horseshoe Crab Biomedical Use Permit:
  - (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
  - (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such

reports shall be filed on forms provided by the Division and shall include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

- (2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale

striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:

- (i) Atlantic Ocean;
- (ii) Albemarle Sound Management Area ~~as designated in 15A NCAC 03R .0201; for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N 75° 39.5736' W to Rhodoms Point 36° 00.2146' N 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N 75° 43.6585' W; to Long Point 36° 02.4971' N 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N 75° 31.0520' W;~~
- (iii) ~~Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; White Oak and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48.3693' N 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N 75° 31.0520' W (southern boundary of the Albemarle Sound Management Area for~~

- ~~Striped Bass) to the county boundaries;~~
- (iv) ~~Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.~~
- (iii) The joint and coastal waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
- (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N – 75° 39.5736' W to Rhodoms Point 36° 00.2146' N – 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N – 75° 43.6585' W to Long Point 36° 02.4971' N – 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W.
- (4) Atlantic Ocean Flounder Dealer Permit:
- (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to *possess* more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7' N latitude) to Rich's Inlet (34° 17.6' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol

Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at [www.nmfs.gov](http://www.nmfs.gov) and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

(f) Aquaculture Operations/Collection Permits:

(1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.

(2) It is unlawful:

(A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.

(B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.

(C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.

(4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.

(5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who shall be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

(1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.

(2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports shall be

filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.

(3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:

(A) without the required license(s) for such sale;

(B) to anyone other than a licensed North Carolina fish dealer; and

(C) without authorization stated on the permit for such sale.

(4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who shall be acting under Scientific or Educational Collection Permits at the time of application.

(5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

*Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.*

**SUBCHAPTER 3Q - JURISDICTION OF AGENCIES:  
CLASSIFICATION OF WATERS**

**SECTION .0100 - GENERAL REGULATIONS: JOINT**

**15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT WATERS**

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

(b) In order to effectively manage the recreational hook and line harvest in joint waters of the Albemarle Sound-Roanoke River stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas: the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201, for the joint waters of the Albemarle Sound and the Roanoke River, along with their defined tributaries. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River Management Area, and its tributaries including Cashie, Middle and Eastmost rivers. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, joint and inland remaining waters of the Albemarle Sound Management Area. Currituck, Roanoke and Croatan Sounds and their tributaries, including joint and inland waters. The annual quota for recreational harvest of the Albemarle-Roanoke striped bass stock shall be divided equally between the two management areas. Each commission shall develop implement a management plans actions for recreational harvest within their respective management areas, areas that will be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan. The management plans shall:

**PROPOSED RULES**

- (1) ~~Be consistent with the guidelines established in the Atlantic States Marine Fisheries Commission Plan for Striped Bass.~~
- (2) ~~Limit harvest to a one fish per person per day creel limit in areas for which no data collection program is ongoing.~~

The dredges and mechanical methods prohibited areas referenced in 15A NCAC 03K .0204 are delineated in the following coastal water areas:

- (a)(1) In Roanoke Sound and tributaries, south of a line beginning at a point 35° 55.1461' N – 75° 39.5618' W on Baum Point, running easterly to a point 35° 55.9795' N - 75° 37.2072' W and north and east of a line beginning at a point 35° 50.8315' N - 75° 37.1909' W on the west side of the mouth of Broad Creek, running easterly to a point 35° 51.0097' N - 75° 36.6910' W near Beacon "17", running southerly to a point 35° 48.6145" N - 75° 35.3760' W near Beacon "7", running easterly to a point 35° 49.0348' N - 75° 34.3161' W on Cedar Point.

- (2) ~~It is unlawful to use mechanical methods to take oysters in In Pamlico Sound and tributaries:~~

- (a) Outer Banks area, within the area bounded described by a line beginning at a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W; thence running 272° (M) 5,420 yards to a point in Wainwright Channel 34° 59' 30" N - 76° 12' 22" W immediately east of the northern tip of Wainwright Island; thence 019° (M) 2,000 yards to red 4 second interval flashing beacon "2CS" 35° 00' 16" N - 76° 12' 12" W; thence 033° (M) 2,900 yards to 4 second interval flashing beacon "HL" 35° 01' 35" N - 76° 11' 27" W; thence 043° (M) 14,450 yards to a point in Pamlico Sound 35° 07' 06" N - 76° 06' 54" W; from which point green 4 second interval flashing beacon "3" on Royal Shoal bears 005° (M) 6,000 yards; green 6 second interval flashing beacon "5" on Royal Shoal bears 325° (M) 6,220 yards; and a yellow 6 second interval flashing beacon on Royal Shoal bears 257° (M) 3,000 yards; thence 078° (M) 7,800 yards to green 2.5 second interval flashing beacon "9" 35° 08' 26" N - 76° 02' 30" W in Nine Foot Shoal Channel; thence 067° (M) 3,640 yards to red 4 second interval flashing beacon "14BF" 35° 09' 21" N - 76° 00' 39" W in Big Foot Slough Channel; thence 078° (M) 26,260 yards to a quick flashing beacon 35° 14' 00" N - 75° 45' 50" W; southwest of Oliver Reef; thence 033° (M) 6,100 yards to 2.5 second interval flashing beacon "1" 35° 16' 46" N - 75° 44' 16" W in Rollinson Channel; thence 079° (M) 13,920 yards to red 4 second interval flashing beacon "2"

Authority G.S. 113-132; 113-134; 143B-289.52.

**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING**

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans actions for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in each the following management area: areas:

- (1) In the Roanoke River Management Area, and tributaries, the exclusive authority to open and close seasons and areas, and establish size and creel limits whether inland or joint fishing waters shall be vested in the Wildlife Resources Commission. ~~The Wildlife Resources Commission shall initiate action to close the management area when 90 percent of the assigned quota has been taken.~~ An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons or areas to harvest in the Roanoke River management area.
- (2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas, areas and establish size and creel limits, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. ~~The Marine Fisheries Commission The season will close the season~~ by proclamation if the quota is about to be exceeded. In the Albemarle Sound ~~management area~~ Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke River ~~management area, Management Area,~~ shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.

**SUBCHAPTER 3R - DESCRIPTIVE BOUNDARIES**

**SECTION .0100 - DESCRIPTIVE BOUNDARIES**

**15A NCAC 03R .0108 MECHANICAL METHODS PROHIBITED**



~~35° 19' 02" N — 75° 36' 19" W in Cape Channel; thence 038° (M) 8,800 yards to green 4 second interval flashing beacon "1" at 35° 22' 48" N — 75° 33' 36" W in Avon Channel; thence 027° (M) 11,900 yards to a point on Gull Island at 35° 28' 27" N — 75° 31' 21" W; thence 012° (M) 15,400 to 4 second interval flashing beacon "ICC" 35° 36' 00" N — 75° 31' 12" W at Chicamacomico Channel; thence 331° (M) 8,600 yards to a point in Pamlico Sound at 35° 39' 21" N — 75° 34' 24" W; thence 013° (M) 7,250 yards to a point in Pamlico Sound at 35° 42' 57" N — 75° 34' 09" W; thence 045° (M) 7,200 yards to a point on the shore of Hatteras Island at 35° 45' 54" N — 75° 31' 06" W; thence running southward with the shoreline of Hatteras Island to a point 35° 11' 30" N — 75° 44' 48" W on the southwest end of Hatteras Island; thence 269° (M) 2,380 yards across Hatteras Inlet to a point 35° 11' 18" N — 75° 46' 15" W on the northeast end of Ocracoke Island; thence southwest with the shoreline of Ocracoke Island to a point 35° 03' 54" N — 76° 00' 54" W on the southwest end of Ocracoke Island; thence 268° (M) 2,220 yards across Ocracoke Inlet to a point 35° 03' 42" N — 76° 02' 15" W on the northeast end of Portsmouth Island; thence running southwest with the shoreline of Portsmouth Island and Core Banks to a point on the north side of Swash Inlet 34° 58' 50" N — 76° 09' 13" W, to the point of the beginning, 35°46.0638' N — 75°31.4385' W on the shore of Pea Island; running southwest to a point 35°42.9500' N — 75°34.1500' W; running southerly to a point 35°39.3500' N — 75°34.4000' W; running southeasterly to a point 35°35.8931' N — 75°31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N — 75°31.5825' W on Gull Island; running southerly to a point 35° 22.8671' N — 75° 33.5851' W in Avon Channel near Beacon "1"; running southwest to a point 35°18.9603' N — 75°36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35°16.7588' N — 75°44.2554' W in Rollinson Channel near Beacon "42RC"; running southwest to a point 35°14.0337' N — 75°45.9643' W~~

southwest of Oliver Reef near the quick-flashing beacon; running westerly to a point 35°09.3650' N — 76°00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwest to a point 35°08.4523' N — 76°02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35°07.1000' N — 76°06.9000; running southwest to a point 35°01.4985' N — 76°11.4353' W near Beacon "HL"; running southwest to a point 35°00.2728' N — 76°12.1903' W near Beacon "2CS"; running southerly to a point 34°59.4383' N — 76°12.3541' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running easterly to a point 34°58.7853' N — 76°09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning; except on private bottom by permit.

- (b) Stumpy Point Bay, north of a line beginning at a point 35° 40.9719' N - 75° 44.4213' W on Drain Point; running westerly to a point 35° 40.6550' N - 75° 45.6869' W on Kazer Point;
- (c) Pains Bay, east of a line beginning at a point 35° 35.0666' N - 75° 51.2000' W on Pains Point, running southerly to a point 35° 34.4666' N — 75° 50.9666' W on Rawls Island; running easterly to a point 35° 34.2309' N - 75° 50.2695' W on the east shore;
- (d) Long Shoal River, north of a line beginning at a point 35° 35.2120' N - 75° 53.2232' W at the 5<sup>th</sup> Avenue Canal, running easterly to a point 35° 35.0666' N - 75° 51.2000' W on the east shore on Pains Point;
- (e) Wysocking Bay:
  - (i) Wysocking Bay, north of a line beginning at a point 35° 25.2741' N - 76° 03.1169' W on Mackey Point, running easterly to a point 35° 25.1189' N - 76° 02.0499' W at the mouth of Lone Tree Creek;
  - (ii) Mount Pleasant Bay, west of a line beginning at a point 35° 23.8652' N - 76° 04.1270' W on Browns Island, running southerly to

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- a point 35° 22.9684' N - 76° 03.7129' W on Bensons Point;
- (f) Juniper Bay, north of a line beginning at a point 35° 22.1384' N - 76° 15.5991' W near the Caffee Bay ditch, running easterly to a point 35° 22.0598' N - 76° 15.0095' W on the east shore;
- (g) Swan Quarter Bay:
- (i) Cafee Bay, east of a line beginning at a point 35° 22.1944' N - 76° 19.1722' W on the north shore, running southerly to a point 35° 21.5959' N - 76° 18.3580' W on Drum Point;
- (ii) Oyster Creek, east of a line beginning at a point 35° 23.3278' N - 76° 19.9476' W on the north shore, running southerly to a point 35° 22.7018' N - 76° 19.3773' W on the south shore;
- (h) Rose Bay:
- (i) Rose Bay, north of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southeasterly and passing near Beacon "5" to a point 35° 25.1854' N - 76° 23.2333' W on the east shore;
- (ii) Tooleys Creek, west of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southwesterly to a point 35° 25.1435' N - 76° 25.1646' W on Ranger Point;
- (i) Spencer Bay:
- (i) Striking Bay, north of a line beginning at a point 35° 23.4106' N - 76° 26.9629' W on Short Point, running easterly to a point 35° 23.3404' N - 76° 26.2491' W on Long Point;
- (ii) Germantown Bay, north of a line beginning at a point 35° 24.0937' N - 76° 27.9348' W; on the west shore, running easterly to a point 35° 23.8598' N - 76° 27.4037' W on the east shore;
- (j) Abel Bay, northeast of a line beginning at a point 35° 23.6463' N - 76° 31.0003' W on the west shore,
- running southeasterly to a point 35° 22.9353' N - 76° 29.7215' W on the east shore;
- (k) Pungo River, Fortescue Creek, east of a line beginning at a point 35° 25.9213' N - 76° 31.9135' W on Pasture Point; running southerly to a point 35° 25.6012' N - 76° 31.9641' W on Lupton Point ;
- (l) Pamlico River:
- (i) North Creek, north of a line beginning at a point 35° 25.3988' N - 76° 40.0455' W on the west shore, running southeasterly to a point 35° 25.1384' N - 76° 39.6712' W on the east shore;
- (ii) Goose Creek:
- (A) Campbell Creek, west of a line beginning at a point 35° 17.3600' N - 76° 37.1096' W on the north shore; running southerly to a point 35° 16.9876' N - 76° 37.0965' W on the south shore;
- (B) Eastham Creek, east of a line beginning at a point 35° 17.7423' N - 76° 36.5164' W on the north shore; running southeasterly to a point 35° 17.5444' N - 76° 36.3963' W on the south shore;
- (iii) Oyster Creek-Middle Prong, southwest of a line beginning at a point 35° 19.4921' N - 76° 32.2590' W on Cedar Island; running southeasterly to a point 35° 19.1265' N - 76° 31.7226' W on Beard Island Point; and southwest of a line beginning at a point 35° 19.5586' N - 76° 32.8830' W on the west shore; running easterly to a point 35° 19.5490' N - 76° 32.7365' W on the east shore;
- (m) Mouse Harbor, west of a line beginning at a point 35° 18.3915' N - 76° 29.0454' W on Persimmon Tree Point; running southerly to a point 35° 17.1825' N - 76° 28.8713' W on Yaupon Hammock Point;

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- (n) Big Porpoise Bay, northwest of a line beginning at a point 35° 15.6993' N - 76° 28.2041' W on Big Porpoise Point; running southwesterly to a point 35° 14.9276' N - 76° 28.8658' W on Middle Bay Point;
- (o) Middle Bay, west of a line beginning at a point 35° 14.8003' N - 76° 29.1923' W on Deep Point; running southerly to a point 35° 13.5419' N - 76° 29.6123' W on Little Fishing Point;
- (p) Jones Bay, west of a line beginning at a point 35° 14.0406' N - 76° 33.3312' W on Drum Creek Point; running southerly to a point 35° 13.3609' N - 76° 33.6539' W on Ditch Creek Point;
- (q) Bay River:
  - (i) Gales Creek-Bear Creek, north and west of a line beginning at a point 35° 11.2833' N - 76° 35.9000' W on Sanders Point; running northeasterly to a point 35° 11.9000' N - 76° 34.2833' W on the east shore;
  - (ii) Bonner Bay, southeast of a line beginning at a point 35° 09.6281' N - 76° 36.2185' W on the west shore; running northeasterly to a point 35° 10.0888' N - 76° 35.2587' W on Davis Island Point;
- (r) Neuse River:
  - (i) Lower Broad Creek, west of a line beginning at a point 35° 05.8314' N - 76° 35.3845' W on the north shore; running southwesterly to a point 35° 05.5505' N - 76° 35.7249' W on the south shore;
  - (ii) Greens Creek - north of a line beginning at a point 35° 01.3476' N - 76° 42.1740' W on the west shore of Greens Creek; running northeasterly to a point 35° 01.4899' N - 76° 41.9961' W on the east shore;
  - (iii) Dawson Creek, north of a line beginning at a point 34° 59.5920' N - 76° 45.4620' W on the west shore; running southeasterly to a point 34° 59.5800' N - 76° 45.4140' W on the east shore;
  - (iv) Clubfoot Creek, south of a line beginning at a point 34° 54.5424' N - 76° 45.7252' W on the west shore, running
- easterly to a point 34° 54.4853' N - 76° 45.4022' W on the east shore;
- (v) Turnagain Bay, south of a line beginning at a point 34° 59.4065' N - 76° 30.1906' W on the west shore; running easterly to a point 34° 59.5668' N - 76° 29.3557' W on the east shore;
- (s) West Bay:
  - (i) Long Bay-Ditch Bay, west of a line beginning at a point 34° 57.9388' N - 76° 27.0781' W on the north shore of Ditch Bay; running southwesterly to a point 34° 57.2120' N - 76° 27.2185' W on the south shore of Ditch Bay; then south of a line running southeasterly to a point 34° 56.7633' N - 76° 26.3927' W on the east shore of Long Bay;
  - (ii) West Thorofare Bay, south of a line beginning at a point 34° 57.2199' N - 76° 24.0947' W on the west shore; running easterly to a point 34° 57.4871' N - 76° 23.0737' W on the east shore;
  - (iii) Merkle Bay, east of a line beginning at a point 34° 58.2286' N - 76° 22.8374' W on the north shore, running southerly to a point 34° 57.5920' N - 76° 23.0704' W on Merkle Bay Point;
  - (iv) North Bay, east of a line beginning at a point 35° 01.8982' N - 76° 21.7135' W on Point of Grass, running southeasterly to a point 35° 01.3320' N - 76° 21.3353' W on Western Point.

(b)(3) ~~It is unlawful to use mechanical methods to take oysters in~~ In Core Sound and its tributaries, ~~tributaries~~ southwest of a line beginning at a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W, and running 292° (M) to a point off Hog Island Reef 35° 00' 06" N - 76° 14' 52" W 35°00.1000' N - 76°14.8667' W near Hog Island Reef; running easterly to a point 34°58.7853' N - 76°09.8922' W on Core Banks; and in the following waterbodies and their tributaries: Back Bay, ~~North Bay~~, the Straits, Back Sound, North River, Newport

- River, Bogue Sound and White Oak River, except on private bottom by permit.
- (e)(4) ~~It is unlawful to use mechanical methods to take oysters in~~ In any of the coastal waters of Onslow, Pender, New Hanover, and Brunswick counties, ~~counties, except on private bottom by permit.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

**SECTION .0200 – FISHERY MANAGEMENT AREAS**

**15A NCAC 03R .0201 STRIPED BASS MANAGEMENT AREAS**

- (a) The Albemarle Sound Management Area is designated as Albemarle Sound and all its joint and inland water tributaries, (except for the Roanoke, Middle, Eastmost and Cashie rivers), Currituck, Roanoke and Croatan sounds and all their joint and inland water tributaries, including Oregon Inlet, north of a line beginning at a point 35° 48 .3693'N - 75° 43 .7232'W on Roanoke Marshes Point, running southeasterly to a point 35° 44 .1710'N - 75° 31 .0520'W on the north point of Eagle Nest Bay.
- (b) The Roanoke River Management Area is designated as Roanoke River and its joint and inland tributaries, including Middle, Eastmost and Cashie rivers, up to the Roanoke Rapids dam.
- (c) The Central/Southern Management Area is designated as all internal coastal, and joint and contiguous inland waters south of a line beginning at a point 35° 48 .3693'N - 75° 43 .7232'W on Roanoke Marshes Point, running southeasterly to a point 35° 44 .1710'N - 75° 31 .0520'W on the north point of Eagle Nest Bay, to the South Carolina line.

Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.

**SUBCHAPTER 03S – ECONOMIC ASSISTANCE TO THE FISHING INDUSTRY**

**SECTION .0100 ECONOMIC ASSISTANCE PROGRAMS**

**15A NCAC 03S .0101 GENERAL**

This Subchapter establishes the process for determining eligibility and distributing federal or state funds for economic assistance to the fishing industry.

Authority G.S. 113-226; 143B-289.52(d); 150B-21.1(a)(2),(3).

**15A NCAC 03S .0102 GRANTS TO COMMERCIAL SHRIMPING INDUSTRY FOR ECONOMIC LOSSES DUE TO FOREIGN IMPORTED SHRIMP**

(a) Eligibility

- (1) Only commercial fishing vessel owners whose vessels landed *Penaeid* shrimp (white, pink, or brown) in North Carolina during calendar year 2002 and who held a valid, current Commercial Fishing Vessel Registration (CFVR) during that year are eligible for compensation under this program to offset economic losses due to the importation of foreign shrimp. For the purposes of this Section, vessel owner is defined as a person

- holding a valid, current North Carolina CFVR for a specific vessel reporting shrimp landings in North Carolina.
- (2) The Division of Marine Fisheries shall determine which commercial fishing vessels are eligible for economic assistance under this program based upon verified shrimp landings in the state in 2002 as reported on North Carolina Trip Tickets. For the purposes of this Section, verified landings are those legally made in North Carolina as recorded by North Carolina Trip Tickets which correspond to a specific vessel and reported landing dates.
- (3) Where ownership of a vessel was transferred in 2002, each CFVR holder will be credited with landings under this program based upon registration of the transferred vessel at the start of the day in which the landings were reported.
- (b) Process
- (1) Each vessel owner determined by the Division of Marine Fisheries to be eligible for economic assistance under this program shall be notified by certified mail, return receipt requested, of his eligibility and of the total verified shrimp landings credited to him for the purpose of this program.
- (2) Any vessel owner claiming shrimp landings who does not receive an eligibility notification letter shall contact the Morehead City office of the Division of Marine Fisheries within the time period specified in the published legal notice setting forth the economic assistance award determination period.
- (3) Each eligible vessel owner shall have 14 calendar days from the date of receipt of the certified letter indicated in Subparagraph (b)(1) of this Rule to return the form that is attached to the eligibility notification letter to the Division of Marine Fisheries completed and signed, indicating a decision whether or not to participate in the program.
- (4) Failure to return a completed and signed response form to the Division of Marine Fisheries within 14 calendar days of receipt shall be considered a decision by the eligible vessel owner to forego participation in the economic assistance program.
- (5) If a vessel owner claims additional shrimp landings, beyond those identified by the Division of Marine Fisheries, upon which to base his level of economic assistance, he must provide copies of North Carolina trip tickets with the signed response form to document his claim. The Division of Marine Fisheries will evaluate such claims, and the vessel owner's landings will be adjusted accordingly if the claims are deemed valid.
- (6) The amount of the economic assistance each commercial fishing vessel owner is eligible for shall be calculated by the Division of Marine Fisheries based upon each vessel owner's

- proportional contribution, in percentage, to the total weight of landed shrimp reported in 2002 on North Carolina Trip Tickets.
- (7) No funds shall be disbursed until all landings disputes submitted in this program are resolved by the Division of Marine Fisheries, in order to ensure that all funds available for economic assistance are disbursed to eligible program participants. The total amount of funds designated for individual economic assistance shall be divided proportionally among eligible commercial fishing vessel owners who elect to participate in the program in a manner that will exhaust all funds for this purpose.
- (8) The Grants to Commercial Shrimping Industry for Economic Losses Due to Foreign Imported Shrimp Program shall terminate upon depletion of funds appropriated by the United States Congress to North Carolina for this purpose.
- (9) The Division of Marine Fisheries shall reserve a contingency fund of an amount to be determined by the Fisheries Director, for use in settling appeals of the final decision on economic assistance awards. Any unused funds appropriated for this program which may be held in reserve by the Division of Marine Fisheries for appeals resolution or administrative purposes will, at the conclusion of the economic assistance portion of the program, be transferred to the North Carolina Department of Agriculture for use, in addition to any other funds transferred for this purpose, for marketing of domestically harvested shrimp.

*Authority G.S. 113-226; 143B-289.52(d); 150B-21.1(a)(2),(3).*

**15A NCAC 03S .0103 GRANTS TO COMMERCIAL BLUE CRABBING INDUSTRY**

(a) Eligibility

- (1) Economic assistance from grants to the commercial blue crabbing industry is available for the following:
- (A) Fishermen: Fishermen who landed blue crab (*Callinectes spp.*) using crab pots, peeler pots, crab trawls, crab dredges, and trotlines, as defined by the North Carolina Division of Marine Fisheries Trip Ticket Program, in North Carolina during calendar years 2000, 2001 or 2002 and who held a valid Standard (SCFL) or Retired Standard Commercial Fishing License (RSCFL) at the time of landing for at least one of those years.
- (B) Fish Dealers: Fish dealers who reported blue crab (*Callinectes spp.*) landings from crab pots, peeler pots,

crab trawls, crab dredges, and trotlines, as defined by the North Carolina Division of Marine Fisheries Trip Ticket Program, during calendar years 2000, 2001 or 2002 and who held a valid North Carolina Fish Dealer License at the time of transaction for at least one of those three years.

(C) Crab Processors: Blue crab processors who held a valid certification as a Department of Environment and Natural Resources, Division of Environmental Health certified crustacean meat processor, and employed persons who processed domestic blue crab meat during calendar years 2000, 2001 or 2002. For the purposes of this Section, processing means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.

- (2) The Division of Marine Fisheries shall identify which fishermen and fish dealers are eligible for economic assistance under this program based upon blue crabs landed in North Carolina and reported on North Carolina trip tickets at the time of landing or transaction and submitted in accordance with 15A NCAC 03I .0114. Where assignment of a license occurred, the SCFL holder who assigned the SCFL shall be credited with landings under this program. Where a SCFL or RSCFL was transferred during 2000, 2001 or 2002, each SCFL or RSCFL holder shall be credited with landings under this program based upon issuance of the transferred license at the start of the day in which the landings were reported.
- (3) The Division shall identify eligible crab processors by using Division of Environment Health certification and inspection records to verify processing activities. Eligible crab processors shall be determined by the name listed on the Permit and Certificate of Compliance document or permit application provided by the Division of Environmental Health. Where ownership of a crab processor was transferred during 2000, 2001 or 2002, each owner's eligibility for his period of ownership shall be determined by the criteria in Part (a)(1)(C) of this Rule.

(b) Process

- (1) Funds from the grant to the commercial blue crabbing industry shall be utilized as follows:
- (A) Five percent of the total funds shall be used for administration of the program.

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- (B) Twelve percent of the total funds shall be set aside for use by the Division of Marine Fisheries to resolve economic assistance disputes, with the remainder of the funds being provided to the N.C. Department of Agriculture for a North Carolina blue crab marketing program.
- (C) The remaining funds shall be divided equally among blue crab fishermen, fish dealers and crab processors as follows:
- (i) One third of the remaining funds shall be awarded to eligible fishermen based upon each fisherman's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina Trip Tickets for the calendar years 2000, 2001 and 2002 except that fishermen with recorded cumulative landings less than 10,000 pounds shall receive economic assistance in the amount of fifty dollars (\$50.00).
- (ii) One third of the remaining funds shall be awarded to eligible fish dealer's based upon each fish dealer's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina trip tickets for the calendar years 2000, 2001 and 2002 except that fish dealer's with recorded cumulative landings less than 10,000 pounds shall receive economic assistance in the amount of fifty dollars (\$50.00).
- (iii) One third of the remaining funds shall be awarded to eligible crab processors based upon each processors proportional contribution, in percentage, to the highest annual employment of employees processing blue crabs, as reported by the Division of Environmental Health during the calendar years of 2000, 2001, or 2002.
- (2) Notification and distribution of assistance:
- (A) Each fisherman, fish dealer and crab processor determined by the Division of Marine Fisheries to be eligible for economic assistance under this program shall be notified by certified mail, return receipt requested of their eligibility. Notification of eligibility shall include the total verified blue crab landings for fishermen or fish dealers, the reported employment levels for crab processors, credited to each person for the purpose of this program.
- (B) Any fisherman, fish dealer or processor claiming blue crab landings who does not receive an eligibility notification letter shall contact the Morehead City Office of the Division of Marine Fisheries within the time period specified in the published legal notice setting forth the economic assistance award determination period.
- (C) Each eligible fisherman, fish dealer or processor shall have 14 calendar days from the date of receipt of the certified letter indicated in Subparagraph (2)(A) of this Rule to return the form that is attached to the eligibility notification letter to the Division of Marine Fisheries completed and signed, indicating a decision whether or not to participate in the program.
- (D) Failure to return a completed and signed response form to the Division of Marine Fisheries within 14 calendar days of receipt shall be considered a decision by the eligible person to forego participation in the economic assistance program.
- (E) If a fisherman or dealer claims additional blue crab landings, beyond those identified by the Division of Marine Fisheries upon which to base the level of economic assistance, that person must provide copies of North Carolina trip tickets that were completed at the time of landing with the signed response form to document the claim within 20 days of receipt of the notification letter and economic assistance check. The Division of Marine Fisheries shall evaluate such claims, and the fisherman or dealer landings shall be adjusted accordingly if the claims are deemed valid. If a crab processor disputes the number of employees involved in blue crab processing, as reported to the Division of Environmental Health,

that person must provide the Division of Marine Fisheries with documentation that substantiates blue crab processing employment, and blue crab production reports for the years 2000, 2001 and 2002 to document the claim.

(F) No funds shall be disbursed until all landings disputes submitted in this program are resolved by the Division of Marine Fisheries, in order to ensure that all funds available for economic assistance are disbursed to eligible program participants. The total amount of funds designated for individual economic assistance shall be divided proportionally among eligible fishermen who elect to participate in the program in a manner that shall exhaust all funds for this purpose.

(G) The Grants to Commercial Blue Crabbing Industry for Economic Losses Program shall terminate upon depletion of funds appropriated by the United States Congress to North Carolina for this purpose.

Authority G.S. 113-226; 143B-289.52(d); 150B-21.1(a)(2),(3).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .2601, .2603-.2604, .2606, .2608-.2610, .2615, .2617-.2622, .2624, .2626-.2627, .2633 and repeal the rules cited as 15A NCAC 18A .2629, .2701-.2725.

Proposed Effective Date: October 1, 2004

Public Hearing:

Date: May 20, 2004

Time: 2:00-4:00 p.m.

Location: Room G1A, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action: To incorporate rules governing meat markets into the existing rules governing food handling establishments and promote consistency with inspections.

Procedure by which a person can object to the agency on a proposed rule: Susan Grayson, Branch Head, DENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, email sue.grayson@ncmail.net, or phone (919) 715-0926

Written comments may be submitted to: Susan Grayson, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739, and email sue.grayson@ncmail.net.

Comment period ends: July 2, 2004

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

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

15A NCAC 18A .2601 DEFINITIONS

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

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved. National Sanitation Foundation standards are ~~adopted~~ incorporated by reference in accordance with G.S. 150B-14(e), including subsequent amendments and editions. These standards may be obtained from the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113-0140 and are also available for inspection at the Division of Environmental Health.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the ~~guidelines~~ rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Department of Environment and Natural Resources" or "Department" means the North

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- Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to ~~these Rules, the rules of this Section~~, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any ~~eating eating, or cooking cooking, or processing utensils, utensils or equipment~~, or who is employed at any time in a room in which food or drink is prepared or served.
- (7) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (8) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- (9) "Food" means any raw, cooked, or processed edible ~~substance, substance including meat, meat food products, poultry, and poultry products~~, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Food service establishment" means any establishments or operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- ~~(10)(11)~~ "Food stand" means ~~those a food service establishments establishment which prepare prepares or serve serves foods and which does does not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.~~
- ~~(11)(12)~~ "Good Repair" means that the item in question can be kept clean and used for its intended purpose.
- ~~(12)(13)~~ "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- ~~(13)(14)~~ "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- ~~(14)(15)~~ "Local Health Director" means the administrative head of a local health department or his authorized representative.
- (16) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (17) "Meat Market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- ~~(15)(18)~~ "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- ~~(16)(19)~~ "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- ~~(17)(20)~~ "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (21) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25).
- ~~(18)(22)~~ "Private club" means a private club as defined in G.S. 130A-247(2).
- ~~(19)(23)~~ "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- ~~(20)(24)~~ "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (25) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- ~~(21)~~ "Restaurant or food service establishment" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.



- (22)(26) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (23)(27) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (24)(28) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (25)(29) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- (26)(30) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (27)(31) "Threat to the Public Health" means circumstances which create a significant risk of serious physical injury or ~~serious adverse health effect.~~ may be a contributing factor to foodborne illness.
- (28)(32) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2603 PUBLIC DISPLAY OF GRADE CARD**

- (a) Upon initial inspection of a food service establishment or if a renovation or other change in the establishment makes the grade inconspicuous, the Environmental Health Specialist shall designate the location for posting of the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the public upon entering the establishment. If the responsible person of the food service establishment objects to the location designated by the Environmental Health Specialist, then the responsible person may suggest an alternative location which meets the criteria of this Rule.
- (b) Whenever an inspection of a restaurant, food stand, ~~or drink stand~~ stand, or meat market is made, the Environmental Health Specialist shall remove the existing grade card, issue a new grade card, and post the new grade card in the same location where the grade card was previously posted as long as that location remains conspicuous. The responsible person or operator of the food service establishment shall be responsible for keeping the grade card posted at the designated location at all times. The grade card may be posted in another location which meets the criteria of this Rule if agreed upon by the responsible person and Environmental Health Specialist.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS**

- (a) Upon entry into a food service establishment, Environmental Health Specialists shall identify themselves and their purpose in visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no employee is identified as the responsible person, Environmental Health Specialists shall invite an employee to accompany them on the inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.
- (b) The grading of restaurants, food stands, ~~or drink stands,~~ or meat markets shall be done on an inspection form furnished by the Department to local health departments. The form shall provide for but need not be limited to the following information:
  - (1) the name and mailing address of the facility;
  - (2) the name of person to whom permit is issued;
  - (3) the permit and score given;
  - (4) standards of construction and operation as listed in Rules .2607 through .2644 of this Section;
  - (5) a short explanation for all points deducted;
  - (6) the signature of the Environmental Health Specialist;
  - (7) the date.
- (c) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food service establishment. Deductions shall be based on actual violations of ~~these Rules~~ the rules of this Section observed during the inspection. The Environmental Health Specialist shall take zero, one-half or a full deduction of points depending upon the severity or the recurring nature of the violation.
- (d) In determining whether items or areas of an establishment are clean for purposes of enforcing the rules set forth in this Section and grading an establishment, the Environmental Health Specialist shall consider, among other things: the age of the accumulated material, the relative percentage of items which are clean and not clean, the cleaning practices of the establishment and the health risk posed by the circumstances.
- (e) Upon request of the permit holder or his or her representative a reinspection shall be made.
- (f) In the case of establishments that have been closed for failure to comply with ~~these Rules,~~ the Rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Environmental Health Specialist.
- (g) In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the Environmental Health Specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 15 days, from the date of the request.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2606 GRADING**

- (a) The sanitation grading of all restaurants, food stands, ~~and drink stands,~~ drink stands and meat markets shall be based on a

system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent.

(b) The grading of restaurants, food stands, ~~and drink stands, drink stands and meat markets~~ shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

~~(d) The Department shall institute a pilot program in no more than seven counties. The pilot counties will be determined by mutual agreement of the local board of health and the Department. In the pilot counties, the grading will be conducted in accordance with this Section however, the numerical score rather than the letter grade awarded will be posted. Rule .2603 of this Section shall apply to the posting of the placards showing the numerical score. The Department shall evaluate the pilot program and report the evaluation to the Commission for Health Services at the August 1999 Commission of Health Services meeting.~~

~~(d)(e)~~ Nothing herein shall effect the right of a permit holder to a reinspection pursuant to Rule .2604 of this Section.

~~(e)(f)~~ Nothing herein shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

*Authority G.S. 130A-248.*

**15A NCAC 18A .2608 SOURCES OF FOOD**

All food shall be obtained from sources that comply with all laws relating to food and food labeling and shall be properly identified. All meat and meat food products and all poultry products shall have been inspected for wholesomeness, where required, under an official federal, state, or local regulatory program; and, in all cases, the source shall be identifiable from labeling on carcasses, cuts, unit packages, bulk packages, or from bills of sale. Food in hermetically sealed containers shall have been processed in a commercial food processing establishment operated in compliance with G.S. 106-120 through ~~445-106-145~~. Copies of G.S. 106-120 through ~~445-106-145~~ may be obtained from the Food and Drug Protection Division, North Carolina Department of Agriculture. All food shall be clean, wholesome, free from adulteration and spoilage, safe for human consumption, and shall be handled, served, or transported in such a manner as to prevent contamination, adulteration, and spoilage. ~~Only approved~~ Approved containers and utensils ~~may~~ shall be used. Foods that are spoiled or otherwise unfit for human consumption shall be immediately disposed of as garbage

or returned to the source except as specified in Rule .2641 of this Section. Foods to be returned to the source shall be marked as such and stored in a fashion so as not to contaminate other food.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2609 REFRIGERATION: THAWING: AND PREPARATION OF FOOD**

(a) All potentially hazardous foods requiring refrigeration shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to 3° F (1.5° C) shall be provided in all refrigerators.

(b) Refrigeration and freezer space shall be provided to accommodate the volume of food handled.

~~(b)(c)~~ Potentially hazardous foods shall be thawed:

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

~~(e)(d)~~ Employees preparing food shall have used antibacterial soap, dips or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Section .2600 of these Rules. Food shall be prepared with the least possible manual contact, with suitable utensils and on preparation surfaces that have been cleaned and rinsed prior to use. Preparation surfaces which come in contact with potentially hazardous foods shall be sanitized as provided in Rule .2618(c) of this Section. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

~~(d)(e)~~ Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) except as follows:

- (1) poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F (74° C) with no interruption of the cooking process, and
- (2) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and
- (3) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C), and
- (4) ~~rare~~-roast beef shall be cooked to an internal temperature of at least 130° F (54° C), and
- (5) ~~rare~~-beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.

PROPOSED RULES

~~(e)~~(f) Liquid eggs, or uncooked frozen eggs, dry eggs and egg products shall be used only for cooking and baking purposes. This Paragraph does not apply to pasteurized products.

~~(f)~~(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated ~~rapidly~~ to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 140° F (60° C). Reheating time shall not exceed two hours.

~~(g)~~(h) All potentially hazardous foods, except ~~rare~~ roast beef, shall be stored at temperatures of 140° F (60° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. Rare roast beef shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

~~(h)~~(i) Time only, rather than the temperature requirements set forth in Paragraph ~~(g)~~(h) of this Rule, may be used in connection with potentially hazardous foods that are displayed or held for service for immediate consumption if:

- (1) The food is labeled with the time of completion of the cooking process or when the food was otherwise removed from temperature control;
- (2) The food is served to the public within two hours of the time of completion of the cooking process or when the food was otherwise removed from required temperature control; and
- (3) The establishment maintains written procedures approved by the Department for the handling of food from the time of completion of the cooking process or when the food is otherwise removed from required temperature control.

~~(i)~~(j) Potentially hazardous food that is displayed or held for service for immediate consumption shall not be served to the public unless it has been maintained at the temperature required in Paragraph ~~(g)~~(h) of this Rule, or:

- (1) it is marked with the time of completion of the cooking process or when it was otherwise removed from required temperature control, ~~or~~ and
- (2) the two hour period referenced in Subparagraph ~~(h)~~(2) (i)(2) of this Rule has not expired.

~~(j)~~(k) All potentially hazardous food that is transported must be maintained at temperatures as noted in Paragraph ~~(g)~~(h) of this Rule.

~~(k)~~(l) A metal stem-type thermometer accurate to 2° F (1° C) shall be available to check food temperatures.

Authority G.S. 130A-248.

**15A NCAC 18A .2610 STORAGE: HANDLING: AND DISPLAY OF FOOD**

(a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that hand openings may

be permitted on counter fronts. A beverage station staffed with an employee who is serving on a continual basis, is not required to provide glass or similar shields for beverages, ice and beverage garnishes. The employee shall remove contaminated beverages, ice or beverage garnishes from the beverage station. ~~This requires standard~~ Standard counter protector installations are required for all cafeteria counters, salad bars, and similar type service to prevent contamination by customers' coughing and sneezing. Nothing in this Rule ~~shall require~~ requires food kept in enclosed cases to be wrapped or covered so long as effective measures are taken to prevent contamination in multi-level shelving units.

(b) Customer self-service is permitted only under the following conditions:

- (1) Buffet-style Service. ~~This style of service is not acceptable unless protective~~ Protective shields, equivalent to cafeteria counter protectors, are provided to intercept contamination.
- (2) Customer Self-Service. When customers are allowed to return to a self-service area, clean and sanitized tableware other than flatware, beverage cups and glasses, shall be made available for each return trip. Written notice shall be provided informing customers that clean tableware ~~needs to~~ must be used for return trips.
- (3) Family-style Service. In establishments featuring this style of service, patrons elect to participate in the family dining-table type of service. Ordinary serving dishes and utensils are acceptable.
- (4) Private events. When service is provided for a club, organization or private individual at a planned event from which the public is excluded:
  - (A) Potentially hazardous foods shall be replaced at least every two hours;
  - (B) Food containers shall be arranged ~~conveniently~~ so customers' clothing does not come in contact with food;
  - (C) Long-handled serving spoons, tongs, or other utensils shall be provided and used;
  - (D) At the conclusion of the event, food that has not been consumed, shall be discarded; and
  - (E) Protective shields are not required for buffet-style service.

(c) Foods, except raw vegetables which are to be cooked, shall be kept under cover when not in the process of preparation and serving. ~~Meat and other potentially hazardous foods~~ Food shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper, or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper or foil. Food transported to a ~~restaurant food service establishment~~ shall not be accepted unless ~~properly wrapped, covered, or otherwise protected~~ boxed, or covered so as to prevent contamination and refrigerated if product requires refrigeration. Food and drink

shall not be served to the general public in the kitchen. In the case of "drive-in" restaurants, all food shall be covered or wrapped before delivery to patrons' vehicles, to exclude vermin or insects, dust, and other contamination.

(d) Food shall not be wrapped in newspaper, or previously used wrapping paper. No spoiled or unwholesome meat or poultry shall be kept, offered for sale, or stored on the premises unless segregated, identified and stored as to prevent contamination. Used poultry crates or boxes shall not be used for the storage of food.

~~(d)~~—(e) Containers for onions, slaw, mustard, and other condiments not kept in accordance with the requirements of Paragraph (a) of this Rule shall have covers and be kept covered when not in use. Sugar shall be dispensed with either pour-type dispensers or individual packages. Waiters and waitresses shall avoid unnecessary handling of food in the process of serving.

~~(e) Effective measures such as fly repellent fans, self closing doors, screens and routine use of approved insecticides shall be taken to keep insects, rodents, animals and other public health pests out of the establishment and to prevent their breeding or presence on the premises. Animals and fowl shall not be permitted in a food service establishment, provided that seeing eye dogs accompanying blind persons and service dogs accompanying handicapped persons shall be exempted.~~

(f) Dustless methods of floor cleaning shall be used and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.

(g) The offering of free unwrapped food samples which were prepared by, or served by, the establishment on its premises, shall be maintained at a location within sight of and under the immediate supervision of an employee or agent for the purposes of observing customer use.

(h) Foods shall not be stored under exposed sewer lines.

(i) Dry beans, grits, flour, sugar, and similar food products shall be stored in approved, covered containers, glass jars, or equal and labeled accordingly.

Authority G.S. 130A-248.

#### 15A NCAC 18A .2615 MILK AND MILK PRODUCTS

(a) Only Grade "A" pasteurized milk and milk products shall be used. The term "milk products" means those products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Department of Environment and Natural Resources, Division of Environmental Health, ~~P.O. Box 27687, Raleigh, North Carolina 27611-7687.~~ 1632 Mail Service Center, Raleigh, North Carolina 27699-1632.

(b) Mixing of cream and milk or the pouring of either into jars, bottles, or other containers for storage therein ~~shall be~~ is prohibited.

(c) Bulk milk dispenser containers, as received from the distributor, shall be properly sealed, labeled with the name and grade of the contents and identity of the distributor. Only the outlet seal shall be broken in the establishment.

(d) Milk and milk products shall be stored in a sanitary manner and shall be kept refrigerated, except when being served. Milk containers shall not be completely submerged in ~~water.~~ water. However however, nothing in these Rules the rules of this Section shall prohibit the placement of these items on ice while on display or being served.

(e) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

Authority G.S. 130A-248.

#### 15A NCAC 18A .2617 UTENSILS AND EQUIPMENT

(a) All eating, drinking, and cooking utensils, tables, sinks, cabinets, hoods, shelves, equipment, fixtures, and other items used in connection with the preparation of food shall be kept clean and in good repair.

(b) All surfaces with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic materials in which there are no open cracks or joints that will collect food particles and slime, and be kept clean.

(c) Shelves, tables, and counters shall not be covered with paper, cardboard, oil cloth, or other absorbent material, and shall be free of crevices. Dining table linen or similar dining table coverings, if used, shall be kept clean and in good repair.

(d) Equipment shall meet ~~National Sanitation Foundation~~ NSF/ANSI standards, which are adopted by reference in accordance with G.S. 150B-14(c). If equipment is not ~~National Sanitation Foundation~~ NSF/ANSE listed, the owner or operator shall submit documentation to the Department that demonstrates that the equipment is at least equivalent to ~~National Sanitation Foundation~~ NSF/ANSE standards. The Department shall determine if the equipment is at least equivalent to ~~National Sanitation Foundation~~ NSF/ANSE standards. In doing so, if the components of the equipment are the same as those meeting ~~National Sanitation Foundation~~ NSF/ANSE standards, then the Department shall deem the equipment equivalent. For purposes of these Rules, toasters, mixers, microwave ovens, hot water heaters and hoods shall not be considered to be Equipment and shall not be required to meet ~~National Sanitation Foundation~~ NSF/ANSE standards.

(e) Beverage dispensers installed or replaced after ~~the effective date of this Rule August 1, 1998~~ shall be designed to avoid activation by the lip of a cup or glass when these dispensers are used to refill customer cups or glasses.

Authority G.S. 130A-248.

#### 15A NCAC 18A .2618 CLEANING OF EQUIPMENT AND UTENSILS

(a) All equipment and fixtures shall be kept clean. All cloths used by chefs and other employees in the kitchen shall be clean.

(b) Single-use articles such as formed buckets, bread wrappers, aluminum pie plates and No. 10 cans shall be used only once except that containers made of plastic, glass or other food grade material having smooth sides and of a construction so as to be easily cleaned may be reused.

(c) All multi-use eating and drinking utensils shall be ~~thoroughly~~ washed, rinsed, and subjected to a bactericidal treatment specified in Rule .2619 of this Section after each usage. The supply of eating and drinking utensils shall be of sufficient quantity to allow washing, rinsing, sanitizing and air-drying before re-use. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking, or serving of food or drink shall be cleaned and rinsed immediately after the days' operations, after each use, or upon completion of each meal as

indicated. Pizza pans and similar type pans (not used for table service) which are continually subjected to high temperatures do not require cleaning after each use or day's use but shall be kept clean and maintained in good repair.

(d) In addition to washing and rinsing multi-use utensils as indicated in Paragraph (c) of this Rule, preparation surfaces which come in contact with potentially hazardous foods and are not subjected to heat during routine cooking operations shall be sanitized. Utensils and equipment that have been used for the preparation of raw meat or raw poultry shall not be used for the preparation of cooked meat, cooked poultry, or other ready-to-eat products unless such utensils and equipment have been cleaned and sanitized. Examples of food contact surfaces which must be sanitized are utensils used in preparing cold salads and cold beverages, cutting boards, table tops, knives, saws, and slicers. For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, and for those establishments which do not have dishwashing equipment, a spray-on or wipe-on sanitizer may be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required in Rule .2619 of this Section for sanitizing multi-use eating and drinking utensils.

(e) Hand dishwashing facilities shall consist of an approved three-compartment sink of sufficient size and depth to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of a sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks or by cross-stacking.

(f) Where the Department determines that the volume of dishes, glasses and utensils to be washed cannot be processed in a single warewashing facility, separate dish, glass or utensil washing facilities shall be required. Separate vegetable washing facilities shall be provided in establishments which wash raw vegetables except where plan review shows that volume and preparation frequency do not require separate vegetable washing facilities or where vegetables are purchased prewashed and packaged. Establishments which ~~scale, or eviscerate~~ scale, eviscerate, thaw, or wash fish, fish, or wash raw poultry, raw poultry, or other food shall provide separate sinks with preparation space for these processes except where plan review shows that volume and preparation frequency do not require separate washing facilities.

(g) ~~When dishwashing machines are used, the machines shall be approved and~~ When warewashing machines are used, the machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions. Machines shall be fitted with drainboards of ~~ample capacity~~ on each side, and include a countersunk sink or other approved means for pre-cleaning, pre-flushing, or pre-soaking of the utensils in the dirty dish lane. Thermometers indicating the wash and rinse water temperatures shall be provided and kept in good repair.

(h) When dishwashing machines are used, the machines shall be approved ~~on the basis of~~ as sufficient for size, capacity, and type for the number of utensils to be washed. ~~Under some conditions, as when volume is limited and time permits, glasses~~ Glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for

final rinse and bactericidal treatment. For this method, a motor-driven glass-washer and a single-vat sink ~~may~~ shall suffice.

(i) Machines shall render equipment clean to sight and touch and provide effective bactericidal treatment.

~~(j)~~ (i) ~~When only single service eating and drinking utensils are used, at~~ At least an approved two-compartment sink shall be provided in meat markets and those food service establishments which only use single-service eating and drinking utensils. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drainboard, overhead or wall mounted shelves, or with the use of stationary or portable racks.

~~(k)~~ (j) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of dishwashing machines, and other food service and cleaning needs. Hot water storage tanks shall provide ~~a minimum of at least~~ 130° F (54° C) hot water when water is not used for ~~sanitizing; when~~ sanitizing. When hot water is used for sanitizing, a minimum storage temperature of 140° F (60° C) hot water is required.

~~(l)~~ (k) No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

~~(m)~~ (l) In determining the sufficiency of the size of drainboards, machine dishwashers and sinks in an establishment, the Environmental Health Specialist shall consider the number and size of multi-use utensils regularly cleaned. For drainboards only, the Specialist shall also consider the available shelf space, racks and other areas which may be used for air drying.

Authority G.S. 130A-248.

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

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

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

(c) Spoons, spatulas, dippers, etc., used for dispensing frozen desserts shall be kept, when not in use, in dipper wells with running water or stored in the food product with the handle extending out of the food or dry stored on a clean surface. When these utensils are used to dispense food products other than frozen desserts, they shall be kept, when not in use, in the product or on a clean surface.

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

*Authority G.S. 130A-248.*

**15A NCAC 18A .2621 DRINKING WATER FOUNTAINS**

If drinking fountains are provided, they shall meet ~~National Sanitation Foundation—NSF/ANSI~~ standards, be of approved angle-jet type and be kept clean. This Rule shall not be interpreted as prohibiting the pitcher service of ice water or the service of bottled water.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2622 STORAGE: HANDLING: AND USE OF ICE**

(a) Ice which is to be used in fountain drinks, ice water, tea, and coffee, or in connection with the chilling or serving of ~~salads, vegetables, or cocktails—food~~ shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner.

(b) Storage boxes shall be covered, located away from sources of contamination, maintained in good repair, and kept clean. Storage bins or boxes shall be provided with rims and covers designed to exclude spillage and drip.

(c) Ice grinders, pans, and buckets used in preparing chipped or crushed ice shall be protected from contamination, thoroughly cleaned between usages, and kept in good repair; buckets and other containers used in the transportation of ice shall be stored above the floor in a clean place.

(d) Ice shall be dispensed or transferred with a scoop, spoon, or other sanitary method. When not in use, an ice scoop or spoon may be stored in the ice with the handle protruding or on a clean surface. Ice scoops shall not be stored in water. Fountain ice compartments, bowls, buckets, or other containers shall be in good repair; ~~frequently~~ washed and kept free of scum, ~~rust, etc.~~ rust; and shall be protected from drip, dust, splash, and other means of contamination. Ice shall not be received, used, or accepted when there is evidence that it is not being handled and transported in a sanitary manner.

(e) Ice machines shall be kept clean.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2624 TOILET FACILITIES**

(a) Unless specified elsewhere in ~~these Rules—the~~ rules of this Section every ~~restaurant—food service establishment~~ shall be provided with toilet facilities conveniently located and readily accessible to employees and customers during all business hours. Restaurants, in addition, shall be provided with toilet facilities conveniently located and readily accessible to customers during all business hours. Toilets shall be in the proximity of the food service establishment and under control of the management. Toilets for patrons shall be so located that the patrons do not

pass through the kitchen to enter the toilet rooms. Intervening rooms or vestibules, if provided, shall be constructed and maintained in accordance with this Rule. ~~Toilets shall be in the proximity of the restaurant and under control of the management.~~ Floors and walls shall be constructed of non-absorbent, washable materials. Floors, walls, and ceilings shall be kept clean and in good repair. Toilet rooms shall be provided with self-closing doors, and kept free of ~~flies and storage-flies.~~ Windows shall be screened if used for ventilation. Toilet rooms shall not be used for storage of food, utensils, or equipment. Fixtures shall be kept clean and in good repair.

(b) Signs shall be posted to advise the public of the locations and identities of the toilet rooms. ~~Durable, legible—Legible~~ signs which read that employees must wash their hands before returning to work shall be posted conspicuously in each employees' toilet room.

(c) Screens and doors are not required for toilet rooms at stadiums or facilities in which toilet rooms open into the interior of a building and the exterior doors of the building are self-closing.

(d) All toilet wastes and other sewage shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved sanitary sewage system.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2626 DISPOSAL OF WASTES AND BY-PRODUCTS**

(a) All waste water shall be disposed of in ~~a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.~~ accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

(b) Garbage shall be collected and stored in ~~standard,~~ water-tight garbage cans or other approved containers or methods and provided with tightfitting lids. Lids shall be kept in place, except for cans inside the kitchen which are being used ~~frequently~~ during normal operations. The contents of these cans shall be removed frequently and the cans shall be washed. ~~These Rules—The rules of this Section~~ do not require lids to be kept on garbage cans or containers which are in use at work stations where food is being prepared.

(c) Garbage and trash resulting from the ~~restaurant operations~~ food service establishment shall be removed from the building as ~~frequently as may be necessary~~ and disposed of in an approved manner. All dry rubbish including scrap paper, cardboard, or similar items shall be stored in containers, rooms or areas in an approved manner.

(d) Indoor or outdoor facilities shall be provided for the washing and storage of all garbage cans and mops. Cleaning facilities shall include combination faucet, hot and cold water, threaded nozzle, and curbed impervious pad sloped to drain or other approved facilities or methods.

(e) Where containerized systems are used for garbage storage, facilities shall be provided for the cleaning of such systems. In the alternative, a contract for off-site cleaning shall constitute compliance with this provision and evidence of such contract shall be made available within 21 days to the Environmental Health Specialist upon request.

*Authority G.S. 130A-248.*

**15A NCAC 18A .2627 FLOORS**

(a) The floors of all rooms in which food is stored, prepared, handled, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, and shall be kept clean and in good repair. Food waste on the floor as a result of that day's preparation process is not a violation of ~~these Rules~~ the Rules of this Section so long as the food waste is removed at regular intervals and prior to closing.

(b) Floors in areas where food is to be prepared or stored ~~may~~ shall be of sealed concrete, terrazzo, quarry or vinyl tile, wood covered with composition flooring or equal, except that:

- (1) carpet may be used in wait stations and self-service bars.
- (2) ~~there will be no special~~ are no flooring requirements for portable cooking units which may be used in a dining room for occasional service at individual tables.
- (3) ~~Nothing in this Section shall prohibit the use of approved anti-skid floor applications where needed for safety reasons.~~

(c) The joints between walls and floors shall be rounded or be otherwise constructed to provide a tight seal between the floor and wall.

~~(d) In all rooms in which water is discharged to the floor, or in which floors are subjected to flood type cleaning, floors shall slope to drain and be provided with floor drains. Floors which are subjected to flood type cleaning shall be provided with floor drains and shall slope to drain.~~

(e) Properly maintained carpeting is acceptable in dining areas.

Authority G.S. 130A-248.

**15A NCAC 18A .2629 DOORS AND WINDOWS**

~~Except as specified in Rule .2624(c) of this Section, outside doors shall be self-closing and all windows into the outer air shall be screened unless other effective means are provided to keep the establishment free of flies.~~

Authority G.S. 130A-248.

**15A NCAC 18A .2633 PREMISES: MISCELLANEOUS: VERMIN CONTROL**

~~(a) The premises under control of the management shall be kept free of items which provide fly or mosquito breeding places or rodent harborages.~~

~~(a)(b)~~ (b) None of the operations shall be conducted in any room used for domestic purposes. A domestic kitchen shall not be used in connection with the operation of a ~~restaurant~~ food service establishment. When a meat market is located in the same room with a grocery store or other establishment, the area in which the meat, meat food products, poultry, or poultry products are stored, handled, and displayed shall be kept free from other merchandise, and the adjacent area shall be kept clean and free of vermin.

~~(c)~~ (b) Soiled linens, coats, and aprons shall be kept in containers provided for this purpose. Laundered table linen and cleaning cloths shall be stored in a clean place until used.

~~(d)~~ (c) Toxic ~~materials~~ materials, cleaners, sanitizers, or similar products used in a ~~restaurant~~ food service establishment shall be labeled. labeled with the common name or manufacturers label.

~~(e)~~ (d) A special area for storage of toxic materials shall be provided and plainly marked. This requirement shall not apply to cleaners and sanitizers used frequently in the operation of the ~~restaurant~~ food service establishment that are stored for availability and convenience if the materials are stored to prevent the contamination of food, equipment, utensils, linens and single-service items.

~~(e)~~ Storage shall be provided for mops, brushes, brooms, hoses, and other items in routine use.

~~(f)~~ Effective measures such as fly repellent fans, self-closing doors, screens, and routine use of approved pesticides shall be taken to keep insects, rodents, animals and other public health pests out of the establishment and to prevent their breeding or presence on the premises.

~~(g)~~ Except as specified below, live animals shall not be allowed in a food preparation or storage area. Live animals shall be allowed in the following situations if their presence will not result in the contamination of food equipment, utensils, linens, and unwrapped single-service and single-use items.

- (1) Fish, crustacea or shellfish in aquariums or display tanks; or other animals in enclosed terrariums or glass-enclosed aviaries.
- (2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas.
- (3) Service animals accompanying persons with disabilities in areas that are not used for food preparation.

~~(h)~~ Only those pesticides which have been registered with the U.S. Environmental Protection Agency and with the North Carolina Department of Agriculture and Consumer Services shall be used. Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

Authority G.S. 130A-248.

**SECTION .2700 - SANITATION OF MEAT MARKETS**

**15A NCAC 18A .2701 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) ~~"Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation Standards or equal shall be considered as approved. National Sanitation Foundation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from the National Sanitation Foundation, P.O. Box 1468, Ann Arbor, Michigan 48106, at a cost of four hundred and fifty dollars (\$450.00), and are also available for inspection at the Division of Environmental Health. Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirement of this Section shall be considered as approved.~~

- (2) ~~"Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.~~
- (3) ~~"Employee" means any person who is employed in the handling or processing of meat, meat food products, poultry, or poultry products, or in the cleaning of utensils or equipment.~~
- (4) ~~"Local Health Director" means the administrative head of a local health department or his authorized representative.~~
- (5) ~~"Meat" and "meat food products" mean meat and meat food products as defined in G.S. 106-549.15(14).~~
- (6) ~~"Meat market" means a meat market as defined in G.S. 130A-247, except, those places subject to G.S. 130A-229.~~
- (7) ~~"Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.~~
- (8) ~~"Poultry" and "poultry products" mean poultry and poultry products as defined in G.S. 106-549.51(25).~~
- (9) ~~"Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.~~
- (10) ~~"Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2600.~~

- (1) ~~the categories of meat food products or poultry products served;~~
- (2) ~~time schedules in completing minor construction items;~~
- (3) ~~modification or maintenance of water supplies;~~
- (4) ~~use of facilities for more than one purpose;~~
- (5) ~~continuation of contractual arrangements upon which basis the permit was issued;~~
- (6) ~~submission and approval of plans for renovation;~~
- (7) ~~any other conditions necessary for a meat market to remain in compliance with this Section.~~

(f) ~~If a permit or transitional permit has been suspended, the suspension shall be lifted after the Department has inspected the meat market and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after the Department has inspected the meat market and found it to comply with this Section. This resurvey shall be conducted within a reasonable length of time after the request is made by the operator.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2703 PUBLIC DISPLAY OF GRADE CARD**

~~Whenever an inspection of a meat market is made, the sanitarian shall remove the existing grade card, issue a grade card, and post the new grade card in a conspicuous place where it may be readily observed by the public. The owner or operator shall be responsible for keeping the grade card posted at the location designated by the sanitarian at all times.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2704 REINSPECTIONS**

- (a) ~~Upon request of the management, a reinspection will be made.~~
- (b) ~~In the case of establishments that have been closed for failure to comply with these Rules, an inspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the sanitarian.~~
- (c) ~~In the case of establishments which request an inspection for the purpose of raising the grade, and which hold unrevoked permits, the sanitarian shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 30 days, for the purpose of establishing a new grade.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2705 APPROVAL OF PLANS**

~~(a) Plans and specifications for new meat markets shall be submitted for review and approval to the local health agency prior to initiating construction. Plans and specifications shall also be submitted prior to the addition of rooms or construction of changes in the dimensions of areas where meat or meat products, or poultry or poultry products, are prepared. These plans shall include changes related to the addition of rooms or the changes in dimensions of areas where meat or meat food products or poultry or poultry products are prepared. Plans and specifications for prototype "franchised" or "chain" facilities~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2702 PERMITS**

- (a) ~~No person shall operate a meat market within the State of North Carolina who does not possess an unrevoked permit from the Department.~~
- (b) ~~No permit to operate shall be issued until a sanitary inspection by a representative of the Department shows that the establishment complies with these sections.~~
- (c) ~~Permits shall be issued by and inspections made by the Department.~~
- (d) ~~Upon transfer of ownership or lease of an existing meat market, the Department shall complete an inspection. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent a threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the meat market shall not continue to operate.~~
- (e) ~~The Department may impose conditions on the issuance of a permit or transitional permit. Conditions may be specified for one or more of the following areas:~~



shall also be submitted for review and approval to the Environmental Health Services Section, Division of Environmental Health.

(b) Construction shall comply with approved plans and specifications.

Authority G.S. 130A-248.

**15A NCAC 18A .2706 INSPECTION FORMS**

The grading of meat markets shall be done on an inspection form furnished by the Department. The forms shall include but need not be limited to the following information:

- (1) name and address of facility;
- (2) name of manager;
- (3) score;
- (4) standards of construction and operation as listed in Rules .2708 through .2724 of this Section;
- (5) signature of authorized representative.

Authority G.S. 130A-248.

**15A NCAC 18A .2707 GRADING**

(a) The sanitation grading of all meat markets shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and no establishment receiving a score of less than 70 percent, or Grade C, shall operate.

(b) The scoring and grading of meat markets shall be based upon the standards of construction and operation described in Rule .2707 through Rule .2724 of this Section.

Authority G.S. 130A-248.

**15A NCAC 18A .2708 FLOORS**

(a) The floors of all utensil-washing rooms, toilet rooms and all rooms in which meat, meat food products, poultry or poultry products are stored, prepared, handled, or sold, shall be constructed to provide durable surfaces which are smooth, non-absorbent and easily cleanable. The floors shall be free of obstacles to cleaning, and shall be kept clean and in good repair. Nothing in this Section shall prohibit the use of approved anti-skid floor applications where needed for safety reasons.

(b) The joints between walls and floors shall be rounded or provided with tight molding.

(c) Exposed utility lines or pipes on the floor are prohibited.

(d) Floors shall be of concrete, terrazzo, tile or equal, shall slope to drain and be provided with floor drains in all rooms in which floors are subjected to flooding-type cleaning or in which water is routinely discharged to the floor.

Authority G.S. 130A-248.

**15A NCAC 18A .2709 WALLS AND CEILINGS**

(a) The walls and ceilings of all rooms shall be kept clean and in good repair.

(b) All walls and ceilings in rooms used for the handling and storage of meat, meat food products, poultry or poultry products;

rooms in which utensils or equipment are washed; walk-in refrigerators; dressing or locker rooms; and toilet rooms shall be easily cleanable and light colored.

(c) Walls shall have washable surfaces to the highest level reached by splash or spray.

Authority G.S. 130A-248.

**15A NCAC 18A .2710 LIGHTING**

All areas in which meat, meat food products, poultry or poultry products are handled or prepared, or in which utensils are washed, shall be provided with at least 50 foot-candles of light on preparation work levels and at utensil washing work levels. At least 10 foot-candles of light at 30 inches above the floor shall be provided in all other areas and rooms including storage rooms and walk-in units. Fixtures shall be kept clean, in good repair and shielded in all areas where meat, meat food products, poultry or poultry products are stored, handled, or prepared.

Authority G.S. 130A-248.

**15A NCAC 18A .2711 TOILET FACILITIES**

(a) Every establishment shall be provided with toilet facilities readily accessible at all business hours.

(b) Toilet rooms shall not be used for storage. Doors shall be self-closing. Fixtures shall be kept clean and in good repair.

Authority G.S. 130A-248.

**15A NCAC 18A .2712 LAVATORY FACILITIES**

(a) Lavatory facilities including hot and cold running water and a mixing faucet, soap, and sanitary towels, or approved hand-drying devices, shall be provided for employees and shall be kept clean.

(b) Lavatory facilities shall be provided in processing areas in addition to any lavatories which may be provided at employees' toilet rooms except where employees' toilets are immediately adjacent to the processing area.

(c) Sinks used for washing utensils and equipment shall not be accepted as a substitute for required lavatory facilities for employees.

(d) Durable, legible signs shall be posted or stenciled conspicuously in each employee's toilet room directing employees to wash their hands before returning to work.

Authority G.S. 130A-248.

**15A NCAC 18A .2713 STORAGE SPACES**

(a) Storage spaces shall be kept clean and free from objectionable odors. All items shall be stored above the floor on solid or slatted shelves, movable dollies or pallets, or equal, or in cabinets.

(b) Shelves in storage rooms should be constructed approximately one inch from the wall to eliminate narrow cracks for roaches, and the bottom shelf should be approximately 15 inches above the floor or otherwise arranged so as to permit thorough cleaning.

(c) Shelves shall not be covered with paper, cardboard, oilcloth, or other absorbent material.

~~(d) All single-service containers, wrapping papers, cardboard pads, plastic bags, ingredients, etc., shall be stored so as to prevent contamination by splash, dust, and vermin.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2714 WATER SUPPLY**

~~(a) The water supply used shall be in accordance with 15A NCAC 18A .1700.~~

~~(b) Connections between potable and non-potable water supplies are prohibited.~~

~~(c) Hot and cold running water under pressure shall be provided to meat, meat food product, poultry, or poultry product preparation areas, utensils, and handwashing areas, and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all meat and meat food products, poultry and poultry products preparation, utensil washing, handwashing, cleaning and other water-using operations.~~

~~(d) Prior to the issuance of a permit, non-community water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.~~

~~(e) Water samples for bacteriological analysis shall be collected by the Department and submitted to the Laboratory Section of the Department of Environment, Health, and Natural Resources or other laboratory certified by the Department for analysis, and at least annually thereafter for bacteriological analysis. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Department.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2715 LIQUID WASTES**

~~All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2716 SOLID WASTES AND BY-PRODUCTS**

~~(a) All solid wastes containing food scraps or other decomposable materials shall, prior to disposal, be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight fitting lids when filled or stored, or not in continuous use; provided, that such containers need not be covered when stored in a special vermin-proofed room or enclosure.~~

~~(b) All dry rubbish including scrap paper, cardboard, or similar items shall be stored in containers, rooms or areas in an approved manner.~~

~~(c) Rooms, enclosures, areas, and containers shall be provided for the storage of all solid wastes accumulating on the premises. Cleaning facilities shall be provided and each container, room or area shall be cleaned after the emptying or removal of the waste.~~

~~(d) All solid wastes shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2717 VERMIN CONTROL: PREMISES**

~~(a) Effective measures shall be taken to keep flies, rodents, and other vermin out of the establishment and to prevent their breeding or presence on the premises. Unless flies and other flying insects are absent from the immediate vicinity of the establishment, all openings to the outer air shall be effectively protected against the entrance of such insects by self-closing doors, closed windows, screening, controlled air currents, or other effective means.~~

~~(b) No live birds or live animals shall be permitted in meat markets.~~

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

~~(d) Only those pesticides which have been properly registered and approved for the purpose shall be used; such pesticides shall be used in accordance with the manufacturer's directions and shall be so handled and stored as to prevent the contamination of containers, equipment, and edible products.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2718 MISCELLANEOUS**

~~(a) Soiled work clothing and any cloths used in processing or for cleaning shall be kept in containers provided for this purpose.~~

~~(b) Approved storage places shall be provided for mops, brushes, brooms, hose, cleaning compounds, and other items in routine use.~~

~~(c) No part of the establishment shall be used for domestic purposes.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2719 EMPLOYEES**

~~(a) All employees shall wear appropriate clean outer clothing, such as caps, coats, aprons, etc., while on duty, shall be clean as to their persons, and shall handle all edible products and utensils and equipment in a sanitary manner.~~

~~(b) No employees shall use tobacco in any form while engaged in the preparation and handling of any edible products, utensils or equipment.~~

~~(c) The hands of all employees handling edible products, utensils or equipment shall be kept clean, and shall be washed before beginning work and after each visit to the toilet.~~

~~(d) No employees who have contagious or infectious diseases shall be allowed to work in the establishment.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2720 UTENSILS AND EQUIPMENT: CLEANING AND STORAGE**

~~(a) All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be kept clean and in good repair; and the food-contact surfaces of such equipment and utensils, shall, in addition, be easily accessible for cleaning, nontoxic, corrosion resistant, and relatively nonabsorbent; provided, that hard maple or equivalent may be used for cutting blocks and boards.~~

~~(b) All sinks other than combination knife and handwashing sinks shall be equipped with one or more drainboards, and with~~

back-splash protection as an integral part of the sink, and shall be fitted with a mixing faucet.

(c) ~~All utensils and equipment used in the handling, cutting, chopping, grinding, mixing, or other processing of meat, meat food products, poultry or poultry products shall be thoroughly cleaned at least once each day or more often if necessary, and rinsed with hot water. All such utensils and equipment shall then be stored so as to drain, dry, and be protected from splash, dust, and other contamination.~~

(d) ~~Utensils and equipment that have been used for the preparation of raw meat or raw poultry shall not be used for the preparation of cooked meat, cooked poultry or other ready-to-eat products unless such utensils and equipment have been cleaned and sanitized. A suitable testing method or equipment shall be available to test the sanitizer used.~~

(e) ~~Adequate hot water heating facilities shall be provided and sufficient hot water shall be available during all periods of operation.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2721 UTENSILS AND EQUIPMENT: INSTALLATION**

~~All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. At least a one-compartment sink of sufficient size to accommodate the largest utensils and equipment to be washed therein, with one adequate drainboard, shall be provided and preferably located in the processing area.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2722 BARBECUE MACHINES**

~~Barbecue machines, if used, shall be located away from the main work areas in the meat market, as on a special table or at the end of a counter, and the following special requirements shall apply:~~

- ~~(1) Provide a separate counter, table, or counter area for wrapping, and for sauce, containers, and similar items.~~
- ~~(2) Provide special utensils and containers which are not used for other purposes in the market.~~
- ~~(3) Provide paper trays, or a single-service container for each item barbecued.~~
- ~~(4) All wrappings, trays, seasonings, sauces, and similar items shall be stored in a clean, dry place protected from dust.~~
- ~~(5) All cooked meat and poultry shall be wrapped and refrigerated promptly at a temperature of 45N F. or below, or kept at 140N F. or above.~~
- ~~(6) The barbecue machine shall be thoroughly cleaned at least once a day if used daily or after each day of use.~~
- ~~(7) After cooked meat and poultry have been refrigerated, they shall be reheated to an internal temperature of 165N F. prior to placing in a warming unit or holding cabinet.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2723 REFRIGERATION**

~~Refrigeration space shall be provided to accommodate the volume of meat and meat food products, poultry and poultry products handled. All refrigerators, meat boxes, and display cases shall be provided with indicating thermometers and the temperature shall not exceed 45N F. at any time. All refrigerators, meat hooks, rails, shelves, meat boxes, and display cases shall be kept clean, free from objectionable odors, and in good repair. All treads, false floors, or other obstacles in the refrigerator shall be easily removable so that the floor of the refrigerator can be easily cleaned.~~

*Authority G.S. 130A-248.*

**15A NCAC 18A .2724 HANDLING AND STORAGE OF MEAT AND OTHER FOOD PRODUCTS**

(a) ~~All meat and meat food products and all poultry and poultry products shall have been inspected for wholesomeness, where required, under an official federal, state, or local regulatory program; and, in all cases, the source shall be identifiable from labeling on carcasses, cuts, unit packages, bulk packages, or from bills of sale.~~

(b) ~~No meat or meat food products and no poultry or poultry products shall be accepted by any market unless it is refrigerated, wrapped, boxed, or covered so as to prevent contamination.~~

(c) ~~No meat or meat food products, or poultry or poultry products shall be kept outside refrigerators or refrigerated display cases, except during immediate processing, transfer, or sale. Refrigeration shall not be required for cured shelf-stable meats. No meat shall be stored directly on the refrigerator floor. Packed containers of poultry shall be stored in such a manner as not to contaminate meat or meat food products.~~

(d) ~~Meat or meat food products, or poultry or poultry products shall not be wrapped in newspaper, or other previously used wrapping paper. No spoiled or unwholesome meat or poultry shall be kept, offered for sale, or stored on the premises. Used poultry crates shall not be used for the storage of meat.~~

(e) ~~Employees shall handle meat and meat food products, or poultry or poultry products in a sanitary manner. Customers and other persons not directly employed in the market shall not be permitted to handle fresh meats and meat products, or poultry or poultry products intended for sale to the public.~~

(f) ~~All shellfish and crustacea meat shall be obtained from sources in compliance with the Department rules on shellfish and crustacea. Copies of 15A NCAC 18A .0100 through .0900 may be obtained from the Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall be on the Interstate-Certified Shellfish Shippers List as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration, 200 "C" Street, S.W., Washington, D. C. 20204, and that if the source of cooked crustacea meat is outside the state, the establishment in which the crustacea meat was packed is certified by the state or territory of origin, attested by the presence of an official permit number on the container.~~

(g) ~~Shucked oysters and clams and cooked crustacea meat shall be stored in the original shipping container on which appears the shipper's permit number. Shell oysters and clams shall be stored in a clean, well-drained room or bin provided especially for that purpose. If in bags, boxes, or barrels, the container shall bear a~~

**PROPOSED RULES**

~~standard identification tag on which appears the name, address, and permit number of the shipper.~~

~~(h) When a meat market is located in the same room with a grocery store or other establishment, the area in which the meat or meat food products or poultry or poultry products are stored, handled, and displayed shall be kept free from other merchandise, and the adjacent area shall be kept clean and free of vermin.~~

Authority G.S. 130A-230; 130A-248.

**15A NCAC 18A .2725 APPEALS PROCEDURE**

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

Authority G.S. 130A-248.

**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 01L .0302-.0305 and repeal the rules cited as 25 NCAC 01L .0306-.0307.*

**Proposed Effective Date:** September 1, 2004

**Public Hearing:**

**Date:** May 18, 2004

**Time:** 10:00 a.m.

**Location:** Administration Building, Third Floor Large Conference Room 116 W. Jones St., Raleigh, NC

**Reason for Proposed Action:** *These Rules are proposed to be amended and repealed in order to provide greater flexibility in administering the Equal Employment Opportunity Institute, to remove outdated information, to update terminology and to provide better clarification to agencies and universities.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any objections to the proposed rules should be directed to Delores A. Joyner, Rule-making Coordinator, State Personnel Commission, 1331 Mail Service Center, Raleigh, NC 27699-1331.*

**Written comments may be submitted to:** *Ms. Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7108, fax (919) 715-9750, and email peggy.oliver@ncmail.net.*

**Comment period ends:** July 2, 2004

**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 6<sup>th</sup> 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 1 - OFFICE OF STATE PERSONNEL**

**SUBCHAPTER 01L - EQUAL OPPORTUNITY**

**SECTION .0300 - EQUAL EMPLOYMENT OPPORTUNITY INSTITUTE**

**25 NCAC 01L .0302 PARTICIPATION AND PURPOSE**

Supervisors and managers hired, promoted or appointed on or after July 1, 1991 shall participate in the EEOI. Supervisors and managers appointed before July 1, 1991 are encouraged to participate in the EEOI. Agencies, departments and universities shall not be authorized to conduct or contract for substitute training to replace EEOI. The purpose of the EEOI training is designed to:

- (1) Address and discuss the history and evolution of equal employment opportunity concepts and principles.
- (2) Assist managers and supervisors in incorporating their equal employment opportunity responsibilities with other management responsibilities.
- (3) Expose managers and supervisors to workplace equity and fairness issues.
- (4) Review and discuss accepted management practices for valuing and managing diversity in the workplace.
- ~~(5) Provide understanding of how diversity can increase productivity and efficiency.~~
- ~~(6) Empower managers and supervisors to remain adaptable and flexible to meet the challenges of an ever changing and more diverse workforce.~~

Authority G.S. 126-16.1.

**25 NCAC 01L .0303 RESPONSIBILITIES: AGENCIES**

(a) It is the responsibility of ~~the head of each state agency, and department, and university chancellor~~ to enroll each supervisor or manager appointed on or after July 1, 1991 in the EEOI. The enrollment shall be within one year of ~~his initial~~ appointment.

(b) Each agency, department or university (hereafter named Agency) shall be responsible for providing its prorata share of the cost for supplies and resource materials.

(c) Agencies shall be responsible for verifying candidate eligibility reports.

(d) Agencies should enroll incumbent managers and supervisors to participate in the EEOI when space is available.

(e) Agencies should incorporate in their new employee orientation program a module of instruction designed to familiarize new employees with the agency's commitment to equal employment opportunity.

*Authority G.S. 126-16.1.*

**25 NCAC 01L .0304 RESPONSIBILITIES: MANAGERS AND SUPERVISORS**

~~(a)(b)~~ All managers and supervisors shall, on an ongoing basis, assure that their management practices are fair and that the work environment enhances equal employment opportunity.

~~(b)(a)~~ Managers and ~~supervisors~~ supervisors, selected to attend the EEOI hired on or after July 1, 1991 shall attend and complete the EEOI in the prescribed time frame.

*Authority G.S. 126-16.1.*

**25 NCAC 01L .0305 RESPONSIBILITIES: OFFICE OF STATE PERSONNEL**

~~(a)~~ All EEOI training shall be conducted by the Equal Opportunity Services (EOS) Division of the Office of State Personnel (OSP).

~~(b)(a)~~ The Office of State Personnel, through the EOS Division shall fully administer the EEOI Program.

~~(c)(b)~~ The Office of State Personnel shall report semi-annually, through the State Personnel Commission, to the Joint Legislative Commission on Governmental Operations beginning January 1, 1992.

*Authority G.S. 126-16.1.*

**25 NCAC 01L .0306 ADMINISTRATION: DEFINITIONS**

(a) "Supervisory positions" are defined as positions in which the majority of the work performed is directing the work of other positions. These employees have the authority to assign work and to evaluate work; to hire employees; to discipline or dismiss employees; or have significant input into such actions.

(b) "Managerial positions" are defined as positions which manage established divisions or subdivisions of a department, agency or university. These employees direct the work of one or more supervisors and have the authority to hire, reward, discipline, or discharge employees. These employees may also provide suggestions for changes in policy to senior executives with policy-making authority.

(c) "Executive managerial" positions are defined as policy making positions. Employees in these positions are

~~agency/department heads, university chancellors, deputies, assistants, vice chancellors, and other policy makers. The employees in executive managerial positions are usually appointed or elected. For the purposes of this policy, the definition of supervisors, managers, and executives also includes the setting of performance expectations, conducting performance appraisal conferences and evaluating performance.~~

~~(d) "Incumbent Executives, Managers and Supervisors" are defined as executive managers and supervisors hired or appointed into positions prior to July 1, 1991.~~

~~(e) "EEOI Candidates" are defined as:~~

~~(1) Managers and supervisors hired on or after July 1, 1991 and who may or may not have served in a management role in state government.~~

~~(2) Incumbent executives, managers and supervisors hired or appointed into current positions prior to July 1, 1991.~~

~~(3) Incumbent executives, managers and supervisors promoted/appointed to a different management position on or after July 1, 1991 who have not attended the EEOI.~~

~~(4) Executive level managers who are hired or appointed with or without executive level experience in state government on or after July 1, 1991 who have not attended the EEOI.~~

(f) "Training Level 1" is defined as the full EEOI Training designed for those managers and supervisors identified in Subparagraph (e)(1) of this Rule. Also, management level employees as identified in Subparagraphs (e)(2) and (e)(3) of this Rule may participate on a space availability basis.

(g) "Training Level 2" is defined as an abbreviated course designed for executive level managers as identified in Subparagraph (e)(4) of this Rule. Also, executive level managers as identified in Subparagraphs (e)(2) and (e)(3) of this Rule may participate on a space availability basis.

(h) "Enroll," for the purposes of this policy, shall be defined as the act of attending and completing the EEOI.

*Authority G.S. 126-16.1.*

**25 NCAC 01L .0307 COURSE SCHEDULING AND SITE SELECTIONS**

Training as set out in Rule .0306 of this Section may be scheduled and conducted at various sites across the State of North Carolina. Schedules will be distributed semi-annually and updated or adjusted as necessary.

*Authority G.S. 126-16.1.*

**APPROVED RULES**

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting March 18, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are 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.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
10A	NCAC	09	.0102*	18:12 NCR
10A	NCAC	09	.0511	18:12 NCR
10A	NCAC	09	.0606*	18:12 NCR
10A	NCAC	09	.0707*	18:12 NCR
10A	NCAC	09	.0714*	18:12 NCR
10A	NCAC	09	.0803*	18:12 NCR
10A	NCAC	09	.1718*	18:12 NCR
10A	NCAC	09	.1720*	18:12 NCR
10A	NCAC	09	.1724*	18:12 NCR
10A	NCAC	41A	.0101	18:07 NCR & 18:09 NCR
10A	NCAC	41A	.0209	18:07 NCR
10A	NCAC	41A	.0212	18:07 NCR & 18:09 NCR
15A	NCAC	02D	.1205*	18:08 NCR
15A	NCAC	02D	.2201-.2202	18:08 NCR
15A	NCAC	02D	.2203-.2204*	18:08 NCR
15A	NCAC	02D	.2205	18:08 NCR
15A	NCAC	02Q	.0113	18:08 NCR
15A	NCAC	02Q	.0202-.0203	18:08 NCR
15A	NCAC	02Q	.0304*	18:08 NCR
15A	NCAC	02Q	.0305	18:08 NCR
15A	NCAC	02Q	.0505	18:08 NCR
15A	NCAC	02Q	.0507*	18:08 NCR
15A	NCAC	07H	.0104*	18:03 NCR & 18:08 NCR
15A	NCAC	07H	.0304	18:03 NCR & 18:08 NCR
20	NCAC	02O	.0101	18:12 NCR
20	NCAC	02O	.0102-.0103*	18:12 NCR
21	NCAC	12	.0202	18:06 NCR
21	NCAC	12	.0210*	18:06 NCR
21	NCAC	12	.0409	18:06 NCR
21	NCAC	14H	.0121*	18:12 NCR
21	NCAC	14J	.0206*	18:11 NCR
21	NCAC	14P	.0108*	18:11 NCR
21	NCAC	14P	.0113*	18:11 NCR
21	NCAC	14Q	.0101-.0106	18:11 NCR
21	NCAC	14Q	.0108-.0110	18:11 NCR
21	NCAC	32S	.0106	18:07 NCR
21	NCAC	40	.0108	18:11 NCR
21	NCAC	46	.1505*	18:07 NCR
21	NCAC	46	.1804*	18:07 NCR
21	NCAC	46	.2605*	18:07 NCR
21	NCAC	61	.0205*	18:09 NCR
21	NCAC	61	.0301*	18:09 NCR
21	NCAC	61	.0309*	18:09 NCR
21	NCAC	61	.0401*	18:09 NCR
26	NCAC	02C	.0101	18:12 NCR
26	NCAC	02C	.0102*	18:12 NCR
26	NCAC	02C	.0103-.0106	18:12 NCR
26	NCAC	02C	.0108*	18:12 NCR
26	NCAC	02C	.0113-.0115	18:12 NCR

26	NCAC	02C	.0206-.0207	18:12 NCR
26	NCAC	02C	.0304-.0305	18:12 NCR
26	NCAC	02C	.0402-.0403	18:12 NCR
26	NCAC	02C	.0501	18:12 NCR
26	NCAC	02C	.0502-.0503*	18:12 NCR
26	NCAC	02C	.0504	18:12 NCR
26	NCAC	02C	.0601-.0604	18:12 NCR
26	NCAC	02C	.0701-.0702	18:12 NCR
26	NCAC	02C	.0703*	18:12 NCR
26	NCAC	03	.0101*	18:12 NCR

**TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES**

**10A NCAC 09 .0102 DEFINITIONS**

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Subchapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.

- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Subchapter, using space which is identifiable for each group.
- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with

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- the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating Scale" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (16) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- (17) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.
- (18) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (19) "Owner" means any person with a five percent or greater equity interest in a child care facility, whether that interest is held directly or through a trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization or association.
- (20) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (21) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (22) "Passageway" means a hall or corridor.
- (23) "Person, as used in the definition of "owner" in Item (19) of this Rule, means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association."
- (24) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- (25) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (26) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.
- (27) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (28) "Section" means Division of Child Development.
- (29) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (30) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- (31) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*History Note: Authority G.S. 110-88; 143B-168.3; Eff. January 1, 1986;*



*Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.*

**10A NCAC 09 .0606 SAFE SLEEP POLICY**

(a) Each center licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
  - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8); or
  - (B) for an infant older than six months, the center receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8), or a parent, or a legal guardian;
- (2) specifies whether pillows, blankets, toys, or other objects may be placed with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (3) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (4) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75° F;
- (5) specifies the means by which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (6) specifies the frequency with which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger with such documents to be maintained for a minimum of one month;
- (8) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The center shall post a copy of its safe sleep policy or a poster about infant safe sleep practices in a prominent place in the infant room.

(c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the center;
- (3) the date the center's safe sleep policy was given and explained to the parent; and

- (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(e) A health care provider's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping as specified in Subparagraph (a)(1) of this Rule shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's physician or parent; and
- (3) specify the infant's authorized sleep positions;

The center shall retain the waiver in the child's record as long as the child is enrolled at the center.

(f) For each infant with a waiver on file at the center as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) The center's safe sleep policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

*History Note: Authority G.S. 110-91(15); 143B-168.3; Eff. May 1, 2004.*

**10A NCAC 09 .0707 IN-SERVICE TRAINING REQUIREMENTS**

(a) Each center shall assure that each new employee who is expected to have contact with children receives a minimum of 10 clock hours of on-site training and orientation within the first six weeks of employment. This training and orientation shall include:

- (1) first-hand observation of the center's daily operations;
- (2) instruction in the employee's assigned duties;
- (3) instruction in the maintenance of a safe and healthy environment;
- (4) training in the recognition of the signs and symptoms of child abuse and neglect and in the employee's duty to report suspected abuse and neglect;
- (5) review of the center's purposes and goals;
- (6) review of the center's personnel policies;
- (7) review of the center's operational policies, including the center's safe sleep policy for infants;
- (8) review of the child care licensing law and regulations;

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- (9) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource; and
- (10) an explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations.

(b) The child care administrator and any staff who have responsibility for planning and supervising a child care program, as well as staff who work directly with children, shall participate in in-service training activities annually, according to the individual's assessed needs. Staff may choose one of the following options for meeting the in service requirement:

- (1) Each staff person shall complete in service training required in G.S. 110-91(11) as specified in the following Parts:
  - (A) persons with a four year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university shall complete five clock hours of training annually.
  - (B) persons with a two year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential or its equivalent shall complete eight clock hours of training annually.
  - (C) persons with a certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential or its equivalent shall complete 10 clock hours of training annually.
  - (D) persons with at least 10 years documented, professional experience as a teacher, director, or caregiver in a licensed child care arrangement shall complete 15 clock hours of training annually.
  - (E) all other persons shall complete 20 clock hours of training annually.
- (2) For staff listed in Parts (b)(1), (A), (B), (C) and (D) of this Rule, basic cardiopulmonary resuscitation (CPR) training required in Rule .0705 of this Section shall not be counted toward meeting annual in-service training. First aid training may be counted once every three years.
- (3) If a child care administrator or lead teacher is currently enrolled in coursework to meet the staff qualification requirements in G.S. 110-91(8), the coursework may be counted toward meeting the annual in-service training requirement.

(c) For staff working less than 40 hours per week on a regular basis and choosing the option for 20 hours of in service training, the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

*History Note: Authority G.S. 110-91(11); 143B-168.3; Eff. January 1, 1986; Amended Eff. May 1, 2004; October 29, 1998; October 1, 1991; November 1, 1989; July 1, 1988; January 1, 1987.*

**10A NCAC 09 .0714 OTHER STAFFING REQUIREMENTS**

(a) Each child care center shall have an administrator on site on a regular basis. The administrator shall be responsible for monitoring the program and overseeing administrative duties of the center. This requirement may be met by having one or more persons on site who meet the requirements for an administrator according to the licensed capacity of the center. The following hourly requirements are based on an administrator's normal working schedule and may include times when the administrator may be off site due to administrative duties, illness, or vacation.

- (1) Each center with a licensed capacity of less than 30 children shall have an administrator on site for at least 20 hours per week.
- (2) Each center with a licensed capacity of 30 to 79 children shall have an administrator on site for at least 25 hours per week.
- (3) Each center with a licensed capacity of 80 to 199 children shall have an administrator on site for at least 30 hours per week.
- (4) Each center with a licensed capacity of 200 or more children shall have an administrator on site for at least 40 hours per week.

(b) At least one person who meets the requirements for an administrator or lead teacher as set forth in this Section shall be on site during the center's operating hours except that a person who is at least 18 years old with at least a high school diploma or its equivalent and who has a minimum of one year's experience working with children in a child care center may be on duty at the beginning or end of the operating day provided that:

- (1) No more than 10 children are present.
- (2) The staff person has worked in that center for at least three months.
- (3) The staff person knows and can apply the center's operating policies and emergency procedures.

(c) At least one person who meets the requirements for a lead teacher shall be responsible for each group of children as defined in Rule .0102 of this Subchapter except as provided in Paragraph (b) of this Rule. This requirement may be met by having one or more persons who meet the requirements for a lead teacher responsible for the same group of children. Each lead teacher

shall be responsible for only one group of children at a time. Each group of children shall have a lead teacher in attendance for at least two-thirds of the total daily hours of operation, based on a normal working schedule and may include times when the lead teacher may not be in attendance due to circumstances such as illness or vacation.

(d) A teacher is a person who is responsible to the lead teacher and assists with planning and implementing the daily program.

(e) No aide or aides shall have responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(f) Children shall be adequately supervised at all times. Adequate supervision shall mean that staff interact with the children while moving about the indoor or outdoor area, and are able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time.

(g) For groups of children aged two years or older, the staff/child ratio during nap time is considered in compliance if at least one person is either in each room or is visually supervising all the children and if the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

(h) When a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.

*History Note: Authority G.S. 110-85(1); 110-91(7),(8); 143B-168.3; Eff. July 1, 1988; Amended Eff. May 1, 2004; July 1, 1998; January 1, 1996; October 1, 1991; November 1, 1989.*

**10A NCAC 09 .0803 ADMINISTERING MEDICATION**

The following provisions apply to the administration of medication in child care centers:

- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream or powder shall be administered to any child:
  - (a) without written authorization from the child's parent;
  - (b) without written instructions from the child's parent, physician or other health professional;
  - (c) in any manner not authorized by the child's parent, physician or other health professional;
  - (d) after its expiration date; or
  - (e) for non-medical reasons, such as to induce sleep.
- (2) Prescribed medications:
  - (a) shall be stored in the original containers in which they were dispensed with the pharmacy labels specifying:
    - (i) the child's name;
    - (ii) the name of the medication or the prescription number;
    - (iii) the amount and frequency of dosage;

- (iv) the name of the prescribing physician or other health professional; and
- (v) the date the prescription was filled; or

(b) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:

- (i) the child's name;
- (ii) the names of the medication;
- (iii) the amount and frequency of dosage;
- (iv) the signature of the prescribing physician or other health professional; and
- (v) the date the instructions were signed by the physician or other health professional; and

(c) shall be administered only to the child for whom they were prescribed.

(3) A parent's written authorization for the administration of a prescription medication described in Item (2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.

(4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:

- (a) the child's name;
- (b) the names of the authorized over-the-counter medication;
- (c) the amount and frequency of the dosages;
- (d) the signature of the parent, physician or other health professional; and
- (e) the date the instructions were signed by the parent, physician or other health professional.

The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Items (6), (7), (8) and (9) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Items (6), (7), (8) and (9) of this Rule.

(5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer that medication without signed, written dosage instructions from a licensed physician or authorized health professional.

- (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions and for allergic reactions. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the subject medical conditions or allergic reactions;
  - (c) the names of the authorized over-the-counter medications;
  - (d) the criteria for the administration of the medication;
  - (e) the amount and frequency of the dosages;
  - (f) the manner in which the medication shall be administered;
  - (g) the signature of the parent;
  - (h) the date the authorization was signed by the parent; and
  - (i) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders --- such as sunscreen, diapering creams, baby lotion, and baby powder --- to a child, when needed. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the names of the authorized ointments, repellents, lotions, creams, and powders;
  - (c) the criteria for the administration of the ointments, repellents, lotions, creams, and powders;
  - (d) the manner in which the ointments, repellents, lotions, creams, and powders shall be applied;
  - (e) the signature of the parent;
  - (f) the date the authorization was signed by the parent; and
  - (g) the length of time the authorization is valid, if less than 12 months.
- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the signature of the parent;
  - (c) the date the authorization was signed by the parent;
  - (d) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may give a caregiver standing authorization to administer an over-the-counter medication as directed by the North Carolina State Health Director or designee, when there is a public health emergency as identified by the North Carolina State Health Director or designee. The authorization shall be in writing, may be valid for as long as the child is enrolled, and shall contain:
- (a) the child's name;
  - (b) the signature of the parent;
  - (c) the date the authorization was signed by the parent; and
  - (d) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (10) Pursuant to G.S. 110-102.1A, a caregiver may administer medication to a child without parental authorization in the event of an emergency medical condition when the child's parent is unavailable, providing the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider.
- (11) A parent may withdraw his or her written authorization for the administration of medications at any time in writing.
- (12) Any medication remaining after the course of treatment is completed or after authorization is withdrawn shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (13) Any time prescription or over-the-counter medication is administered by center personnel to children receiving care, including any time medication is administered in the event of an emergency medical condition without parental authorization as permitted by G.S. 110-102.1A, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered. No documentation shall be required when items listed in Item (7) of this Rule are applied to children.

*History Note: Authority G.S. 110-91(1),(9); 143B-168.3; Eff. January 1, 1986; Amended Eff. May 1, 2004; April 1, 2001; July 1, 1998; January 1, 1996.*

**10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS**

The operator shall provide the following on a daily basis for all children in care:

- (1) meals and snacks which comply with the Meal Patterns for Children in Child Care standards which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food and number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care nutrition standards are incorporated by reference and include subsequent amendments. A copy of these standards is available free of charge from the Division at the address in Rule .0102 of this Subchapter.
  - (a) No child shall go more than four hours without a meal or a snack being provided.
  - (b) Drinking water shall be freely available to children and offered at frequent intervals.
  - (c) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care provider.
  - (d) Each infant will be held for bottle feeding until able to hold his or her own bottle. Bottles will not be propped. Each child will be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.
  - (e) The parent or health care provider of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care provider, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care provider to reflect changes in the child's needs as he or she develops.
- (2) frequent opportunities for outdoor play or fresh air.

- (3) an individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet.
- (4) a quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care.
- (5) visual supervision for all children who are awake. The operator shall be able to hear and respond quickly to those children who are sleeping or napping.
- (6) a safe sleep environment by ensuring that when a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.
- (7) the opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach.
- (8) developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available to support the activities listed on the written schedule. The written schedule shall:
  - (a) show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest; and
  - (b) be displayed in a place where parents are able to view; and
  - (c) reflect daily opportunities for both free-choice and guided activities.

*History Note: Authority G.S. 110-88; 110-91(2),(12); Eff. July 1, 1998; Amended Eff. May 1, 2004.*

**10A NCAC 09 .1720 SAFETY, MEDICATION, AND SANITATION REQUIREMENTS**

- (a) To assure the safety of children in care, the operator shall:
  - (1) empty firearms of ammunition and keep both in separate, locked storage;
  - (2) keep items used for starting fires, such as matches and lighters, out of the children's reach;
  - (3) keep all medicines in locked storage;
  - (4) keep hazardous cleaning supplies and other items that might be poisonous, e.g., toxic plants, out of reach or in locked storage when children are in care;
  - (5) keep first aid supplies in a place accessible to the operator;
  - (6) keep tobacco products out of reach or in locked storage when children are in care;

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- (7) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
  - (8) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone;
  - (9) have access to a means of transportation that is always available for emergency situations; and
  - (10) be able to recognize common symptoms of illnesses.
- (b) The operator may provide care for a mildly ill child who has a Fahrenheit temperature of less than 100 degrees axillary or 101 degrees orally and who remains capable of participating in routine group activities; provided the child does not:
- (1) have the sudden onset of diarrhea characterized by an increased number of bowel movements compared to the child's normal pattern and with increased stool water; or
  - (2) have two or more episodes of vomiting within a 12 hour period; or
  - (3) have a red eye with white or yellow eye discharge until 24 hours after treatment; or
  - (4) have scabies or lice; or
  - (5) have known chicken pox or a rash suggestive of chicken pox; or
  - (6) have tuberculosis, until a health professional states that the child is not infectious; or
  - (7) have strep throat, until 24 hours after treatment has started; or
  - (8) have pertussis, until five days after appropriate antibiotic treatment; or
  - (9) have hepatitis A virus infection, until one week after onset of illness or jaundice; or
  - (10) have impetigo, until 24 hours after treatment; or
  - (11) have a physician's or other health professional's written order that the child be separated from other children.
- (c) The following provisions apply to the administration of medication in family child care homes:
- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream or powder shall be administered to any child:
    - (A) without written authorization from the child's parent;
    - (B) without written instructions from the child's parent, physician or other health professional;
    - (C) in any manner not authorized by the child's parent, physician or other health professional;
    - (D) after its expiration date; or
    - (E) for non-medical reasons, such as to induce sleep.
  - (2) Prescribed medications:
    - (A) shall be stored in the original containers in which they were dispensed with the pharmacy labels specifying:
      - (i) the child's name;
      - (ii) the name of the medication or the prescription number;
      - (iii) the amount and frequency of dosage;
      - (iv) the name of the prescribing physician or other health professional; and
      - (v) the date the prescription was filled; or
    - (B) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
      - (i) the child's name;
      - (ii) the names of the medication;
      - (iii) the amount and frequency of dosage;
      - (iv) the signature of the prescribing physician or other health professional; and
      - (v) the date the instructions were signed by the physician or other health professional; and
    - (C) shall be administered only to the child for whom they were prescribed.
  - (3) A parent's written authorization for the administration of a prescription medication described in Paragraph (c)(2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.
  - (4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:
    - (A) the child's name;
    - (B) the names of the authorized over-the-counter medication;
    - (C) the amount and frequency of the dosages;
    - (D) the signature of the parent, physician or other health professional; and
    - (E) the date the instructions were signed by the parent, physician or other health professional.
- The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Subparagraphs (c)(6), (7), (8), and (9) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed

- in Subparagraphs (c)(6), (7), (8), and (9) of this Rule.
- (5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer the medication without signed, written dosage instructions from a licensed physician or authorized health professional.
- (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions and for allergic reactions. The authorization shall be in writing and shall contain:
- (A) the child's name;
  - (B) the subject medical conditions or allergic reactions;
  - (C) the names of the authorized over-the-counter medications;
  - (D) the criteria for the administration of the medication;
  - (E) the amount and frequency of the dosages;
  - (F) the manner in which the medication shall be administered;
  - (G) the signature of the parent;
  - (H) the date the authorization was signed by the parent; and
  - (I) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders --- such as sunscreen, diapering creams, baby lotion, and baby powder --- to a child, when needed. The authorization shall be in writing and shall contain:
- (A) the child's name;
  - (B) the names of the authorized ointments, repellents, lotions, creams, and powders;
  - (C) the criteria for the administration of the ointments, repellents, lotions, creams, and powders;
  - (D) the manner in which the ointments, repellents, lotions, creams, and powders shall be applied;
  - (E) the signature of the parent;
  - (F) the date the authorization was signed by the parent; and
  - (G) the length of time the authorization is valid, if less than 12 months.
- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
- (A) the child's name;
  - (B) the signature of the parent;
  - (C) the date the authorization was signed by the parent;
  - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may give a caregiver standing authorization to administer an over-the-counter medication as directed by the North Carolina State Health Director or designee, when there is a public health emergency as identified by the North Carolina State Health Director or designee. The authorization shall be in writing, may be valid for as long as the child is enrolled, and shall contain:
- (A) the child's name;
  - (B) the signature of the parent;
  - (C) the date the authorization was signed by the parent; and
  - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (10) Pursuant to G.S. 110-102.1A, a caregiver may administer medication to a child without parental authorization in the event of an emergency medical condition when the child's parent is unavailable, providing the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider.
- (11) A parent may withdraw his or her written authorization for the administration of medications at any time in writing.
- (12) Any medication remaining after the course of treatment is completed or after authorization is withdrawn shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (13) Any time prescription or over-the-counter medication is administered by a caregiver to children receiving care, including any time medication is administered in the event of an emergency medical condition without parental authorization as permitted by G.S. 110-102.1A, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication

is administered. No documentation shall be required when items listed in Subparagraph (c)(7) of this Rule are applied to children.

(d) To assure the health of children through proper sanitation, the operator shall:

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
- (2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas;
- (3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
  - (A) wash his or her hands before, as well as after, diapering each child;
  - (B) ensure the child's hands are washed after diapering the child; and
  - (C) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;
- (4) use sanitary procedures when preparing and serving food. The operator shall:
  - (A) wash his or her hands before and after handling food and feeding the children; and
  - (B) ensure the child's hands are washed before and after the child is fed;
- (5) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids.
- (6) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
- (7) date and label all bottles for each individual child, except when there is only one bottle fed child in care;
- (8) have a house that is free of rodents;
- (9) screen all windows and doors used for ventilation;
- (10) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs; and
- (11) store garbage in waterproof containers with tight fitting covers.

(e) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.

(f) The operator shall not use tobacco products at any time while children are in care. Smoking or use of tobacco products

shall not be permitted indoors while children are in care, or in a vehicle when children are transported.

*History Note: Authority G.S. 110-88; 110-91(6);*

*Eff. July 1, 1998;*

*Amended Eff. May 1, 2004; April 1, 2003; April 1, 2001.*

**10A NCAC 09 .1724 SAFE SLEEP POLICY**

(a) Each operator licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
  - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8); or
  - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8), or a parent, or a legal guardian;
- (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;
- (3) specifies whether pillows, blankets, toys, and other objects may be placed in a crib with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
- (6) specifies the means by which the operator shall visually check sleeping infants aged 12 months or younger;
- (7) specifies the frequency with which the operator shall visually check sleeping infants aged 12 months or younger;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger, with such documents to be maintained for a minimum of one month;
- (9) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy or a poster about safe sleep practices in a prominent place in the infant sleeping room or area.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:



- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) A physician's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's physician or parent; and
- (3) specify the infant's authorized sleep positions;

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) The home's safe sleep policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

*History Note: Authority G.S. 110-91(15); 143B-168.3; Eff. May 1, 2004.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT  
& NATURAL RESOURCES**

**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

Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .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  $2.3 \times 10^{-7}$
  - (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
  - (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
  - (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$
- (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 Rule .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 Rule .0524, .1110, or .1111 of this Subchapter applies.
- (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 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;
  - (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.

- (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.

*History Note: 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; Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; Temporary Amendment Eff. March 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment Eff. March 1, 2003; Temporary Amendment Expired December 12, 2003; Amended Eff. April 1, 2004.*

**15A NCAC 02D .2203 PUBLIC NOTICE**

(a) The requirements of this Rule for public notice and public hearing 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 hearing. The description shall specify that comments and

requests for a public hearing 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 hearing for proposed Consent Order:

- (1) The Director shall consider all requests for a public hearing, and if he determines significant public interest for a public hearing exists, then he shall hold a public hearing.
- (2) The Director shall give notice of the public hearing at least 30 days before the hearing.
- (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 hearing 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 hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, 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 to the Commission; 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.

*History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110; Eff. April 1, 2004.*

**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 hearing 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 hearing 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 hearing.

*History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110; Eff. April 1, 2004.*

**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;
- (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
- (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 2D .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(a)(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.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. April 1, 2004; July 1, 1999.*

**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 02D .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 forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. 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;
- (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
- (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.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995; Temporary Amendment Eff. December 1, 1999; Amended Eff. April 1, 2004; July 1, 2000.*

**15A NCAC 07H .0104 DEVELOPMENT INITIATED PRIOR TO ADOPTION BY THE CRC**

(a) Development on lots created after January 29, 2004 shall comply with the current erosion rates established pursuant to 15A NCAC 07H .0304.

(b) Development on lots created between June 1, 1979 and 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.

(c) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124; Eff. September 15, 1979; Amended Eff. April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988.*

**TITLE 20 - DEPARTMENT OF THE TREASURER**

**20 NCAC 02O .0102 SHORT-TERM DISABILITY**

(a) A participant shall be entitled to short-term disability benefits if the participant meets the eligibility requirements pursuant to G.S. 135-105(a).

(b) "Any other jobs available with the State" is defined as a job which:

- (1) has comparable minimum experience, training, and education requirements as the minimum experience, training and education requirements of the position currently held by the participant;
- (2) is within the same employer (State agency, University, Community College, or public school system);
- (3) is offered by the employer to the participant;
- (4) is within 50 miles of the participant's former work location;
- (5) maintains the participant's career or tenure status; and
- (6) provides a salary rate greater than the short-term benefit.

*History Note: Authority G.S. 135-101(6); 135-102(c); 135-105(a); Eff. April 1, 2004.*

**20 NCAC 02O .0103 LONG-TERM DISABILITY**

(a) A beneficiary or participant shall be entitled to long-term disability benefits if he meets the eligibility requirements pursuant to G.S. 135-106(a).

(b) A beneficiary or participant shall be considered to be disabled if he is unable to perform any occupation by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A beneficiary or participant shall be determined to be disabled only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any beneficiary or participant), "work which exists in the national economy" means work as defined by the Code of Federal Regulations for the Social Security Administration (20 CFR 416.966).

*History Note: Authority G.S. 135-101(6); 135-102(c); 135-106(a);*

*Eff. April 1, 2004.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS**

**21 NCAC 12 .0210 PUBLIC BUILDING PROJECTS**

If a public building project is performed pursuant to G.S. 87-1.1, the total amount of work to be performed by all licensed general contractors shall not exceed 25% of the total bid price. A licensed general contractor shall hold the applicable classifications and limitation for the work undertaken by such licensed general contractor. For the purpose of this Rule, a public building project is a building project that is governed by G.S. 143, Article 8.

*History Note: Authority G.S. 87-1.1; 87-4; Eff. April 1, 2004.*

**CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS**

**21 NCAC 14H .0121 PROHIBITED PRACTICES**

Licensed cosmetologists, estheticians, and manicurists shall not use or possess in a shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomers, a.k.a. MMA; and
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses.

*History Note: Authority G.S. 88B-4; Eff. April 1, 2004.*

**21 NCAC 14J .0206 EQUIPMENT IN ADVANCED DEPARTMENT**

The advanced department must be equipped with the following equipment:

- (1) for departments with 20 to 29 stations, two manicure tables and stools;
- (2) for departments with 30 or more stations, four manicure tables and stools;
- (3) for departments with 20 to 29 stations, eight dryers and chairs;
- (4) for departments with 30 or more stations, 12 dryers and chairs;
- (5) eight shampoo bowls and chairs;
- (6) 20 dressing tables and styling chairs;
- (7) for departments with 20 to 29 stations, one facial chairs;
- (8) for departments with 30 or more stations, two facial chairs;
- (9) three marcel heaters; and
- (10) three marcel irons.

*History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. April 1, 2004; August 1, 1998; October 1, 1990; January 1, 1989; April 1, 1988.*

**21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES**

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- |     |                         |            |
|-----|-------------------------|------------|
| (1) | 1 <sup>st</sup> offense | \$250.00   |
| (2) | 2 <sup>nd</sup> offense | \$500.00   |
| (3) | 3 <sup>rd</sup> offense | \$1,000.00 |

(b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:

- |     |                         |            |
|-----|-------------------------|------------|
| (1) | 1 <sup>st</sup> offense | \$300.00   |
| (2) | 2 <sup>nd</sup> offense | \$500.00   |
| (3) | 3 <sup>rd</sup> offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$300.00 |
| (2) | 2 <sup>nd</sup> offense | \$400.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

(d) The presumptive civil penalty for submitting false or fraudulent documents is:

- |     |                         |            |
|-----|-------------------------|------------|
| (1) | 1 <sup>st</sup> offense | \$500.00   |
| (2) | 2 <sup>nd</sup> offense | \$800.00   |
| (3) | 3 <sup>rd</sup> offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification is:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$100.00 |
| (2) | 2 <sup>nd</sup> offense | \$250.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:

- |     |                         |                    |
|-----|-------------------------|--------------------|
| (1) | 1 <sup>st</sup> offense | warning (\$300.00) |
| (2) | 2 <sup>nd</sup> offense | \$400.00           |
| (3) | 3 <sup>rd</sup> offense | \$500.00           |

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:

- |     |                         |                    |
|-----|-------------------------|--------------------|
| (1) | 1 <sup>st</sup> offense | warning (\$300.00) |
| (2) | 2 <sup>nd</sup> offense | \$400.00           |
| (3) | 3 <sup>rd</sup> offense | \$500.00           |

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:

- |     |                         |           |
|-----|-------------------------|-----------|
| (1) | 1 <sup>st</sup> offense | \$500.00  |
| (2) | 2 <sup>nd</sup> offense | \$800.00  |
| (3) | 3 <sup>rd</sup> offense | \$1000.00 |

(i) The presumptive civil penalty for the illegal use of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- |     |                         |           |
|-----|-------------------------|-----------|
| (1) | 1 <sup>st</sup> offense | \$300.00  |
| (2) | 2 <sup>nd</sup> offense | \$500.00  |
| (3) | 3 <sup>rd</sup> offense | \$1000.00 |

*History Note: Authority G.S. 88B-4; 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. April 1, 2004; August 1, 2002; April 1, 2001.*

**21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART**

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- |     |                         |                    |
|-----|-------------------------|--------------------|
| (1) | 1 <sup>st</sup> offense | warning (\$100.00) |
|-----|-------------------------|--------------------|

## APPROVED RULES

- (2) 2<sup>nd</sup> offense \$200.00  
(3) 3<sup>rd</sup> offense \$300.00
- (b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:
- (1) 1st offense warning (\$50.00)  
(2) 2nd offense \$100.00  
(3) 3rd offense \$200.00
- (c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist and esthetician enrollments within 15 working days 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 display a copy of the sanitary rules is:
- (1) 1<sup>st</sup> offense warning (\$50.00)  
(2) 2<sup>nd</sup> offense \$100.00  
(3) 3<sup>rd</sup> offense \$200.00
- (e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:
- (1) 1<sup>st</sup> offense warning (\$50.00)  
(2) 2<sup>nd</sup> offense \$100.00  
(3) 3<sup>rd</sup> offense \$200.00
- (f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:
- (1) 1<sup>st</sup> offense \$200.00  
(2) 2<sup>nd</sup> offense \$400.00  
(3) 3<sup>rd</sup> offense \$600.00
- (g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all time is:
- (1) 1<sup>st</sup> offense \$200.00  
(2) 2<sup>nd</sup> offense \$400.00  
(3) 3<sup>rd</sup> offense \$600.00

*History Note: Authority G.S. 88B-4; 88B-16; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. April 1, 2004.*

### CHAPTER 46 - BOARD OF PHARMACY

#### 21 NCAC 46 .1505 EXAMINATION

- (a) The applicant shall pass the following examinations:
- (1) a national examination;  
(2) a jurisprudence examination; and  
(3) a practical examination which includes an error and omission section.
- (b) For the purpose of grading or rating, the answers, which shall be legible, shall be valued by marks or points based on their importance, as determined by the judgment of the examiners.
- (c) In order to pass, a score of 75 or more is required on each examination. Candidates who obtain a score of 75 or more on each examination are deemed to have passed the respective examination provided that the candidate obtains a passing score on the remaining examinations within the next following two calendar years. If the examination is taken outside of North Carolina, the examination score shall be properly transferred to

North Carolina. A candidate who fails to pass all three examinations in the two calendar year period must retake and pass all three examinations within a two calendar year period.

(d) At the time of the examination, the Board may designate certain questions which, if missed, shall require the candidate to obtain continuing education. The continuing education required will be specified by the Board and must be obtained by the candidate prior to issuance of a pharmacist license.

*History Note: Authority G.S. 90-85.15; 90-85.16; Eff. April 1, 1983; Amended Eff. April 1, 2004; April 1, 2003; July 1, 1996; December 31, 1985.*

#### 21 NCAC 46 .1804 PRESCRIPTION: RECEIVING AND DISPENSING

(a) In order to assure that the practitioner-pharmacist-patient relationship exists and to promote the safe and secure distribution of drugs and devices from a pharmacy, prescription orders may be received for filling and refilling only by a pharmacist or a bona fide employee of the pharmacy. The pharmacist-manager of the pharmacy shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs. Notwithstanding the provisions of this Rule, prescription drugs also may be delivered by mail in accordance with the provisions of 21 NCAC 46 .1601(b).

(b) In filling or refilling prescription orders, the pharmacist shall not be required to deal with parties, including managed care companies and insurance providers, outside the practitioner-pharmacist-patient relationship.

(c) In order to promote the safe and secure distribution of devices and medical equipment from a facility holding a device and medical equipment permit, prescription orders for devices and medical equipment may be received for filling and refilling only by the person in charge of the facility holding the device and medical equipment permit or a bona fide employee of the facility. The person in charge shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of devices and medical equipment. Unless the location also holds a pharmacy permit, a facility holding a device and medical equipment permit shall not acquire, receive, store, or deliver prescription drugs.

*History Note: Authority G.S. 90-85.6; 90-85.32; Eff. December 1, 1983; Amended Eff. April 1, 2004; August 1, 2000; September 1, 1995; May 1, 1989; August 1, 1988.*

#### 21 NCAC 46 .2605 REGISTRATION OF NON-PHARMACISTS

(a) Registration of persons other than pharmacists dispensing devices or delivering medical equipment, pursuant to G.S. 90-85.22, shall be issued by the Board to the person in charge of the location dispensing the devices or delivering medical equipment. This person shall have responsibilities comparable to those of a pharmacist-manager pursuant to Board Rule .2502 of this Chapter, as applicable. Persons in charge shall keep on file for three years on the premises of each place where devices are dispensed or medical equipment is delivered all information related to warranties provided by manufacturers and the

availability of repairs; provided, that this requirement shall not apply to disposable devices and medical equipment. A person shall be in charge of only one location.

(b) A person in charge shall not:

- (1) commit a felony;
- (2) commit any act as a principal in a business entity that causes such entity to be excluded from participation in a federal or state program.

If a person in charge commits the conduct set out in Paragraphs (b)(1) and (b)(2) of this Rule while he or she is a person in charge, he or she shall no longer serve as a person in charge for the existing permit or for any other device and medical equipment permit.

*History Note: Authority G.S. 90-85.3(e), (11), (r); 90-85.6; 90-85.22; Eff. October 1, 1990; Amended Eff. April 1, 2004; September 1, 1995.*

**CHAPTER 61 - THE NORTH CAROLINA RESPIRATORY CARE BOARD**

**21 NCAC 61 .0205 BACKGROUND INVESTIGATION**

(a) Every applicant for licensure shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) as required to perform a criminal history check by the North Carolina Department of Justice at the time of the application. In all instances the applicant must make full and accurate disclosure of any felony convictions, any misdemeanor convictions (except for traffic violations), convictions of any crime directly related to the practice of respiratory care or any disciplinary action pending or ever been taken against any health care provider license / certificate the applicant has or has had.

(b) The applicant shall provide any additional information regarding any conviction as requested by the Board.

(c) Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to licensure pursuant to G.S. 90-659.

(d) The Board shall determine if any conviction is related to the duties and responsibilities of a respiratory care practitioner. The Board shall consider the following factors:

- (1) The nature and seriousness of the crime;
- (2) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and
- (3) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a respiratory care practitioner.

(e) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

(f) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedure established in G.S. 150B, Article 3A.

*History Note: Authority G.S. 90-652(1); Eff. April 1, 2004.*

**21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE**

(a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in the Rules in this Section.

(b) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will not be reissued. A license card showing the expiration date must be filed or on display at the licensee's principal place of business so as to be available for inspection. Each licensee also shall keep a copy of the license wallet card available for inspection to anyone on request in the course of delivering services.

(c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee shall wear a badge or nameplate that displays, in easily visible type, the licensee's name followed by a comma and the designation "RCP," that is an abbreviation for respiratory care practitioner. Provisional license holders shall wear a badge or nameplate which displays, in easily visible type, the licensee's name and the designation "RCP-Provisional." RCP students shall wear a badge or nameplate that displays, in easily visible type, the student's name, the designation "RCP Student" and the name of the school the student is attending.

*History Note: Authority G.S. 90-640; 90-652(2),(4); 90-658(b); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. April 1, 2004.*

**21 NCAC 61 .0309 SCHEDULE OF CIVIL PENALTIES**

(a) The rules in this Subchapter establish the schedule of civil penalties set out in G.S. 90-666(a). The amounts stated are the presumptive amounts that may be modified in the discretion of the Board based upon factors set forth in G.S. 90-666(b).

(b) The presumptive civil penalty for the following violations is: 1st offense fifty dollars (\$50.00) (Warning), 2nd offense one hundred dollars (\$100.00), 3rd offense two hundred fifty dollars (\$250.00). Those violations that are first offense correctable are identified with the word "warning" appended to them. If the offense is not corrected within the 30 day time allotted, the presumptive civil penalty in parenthesis shall apply.

- (1) Failure to display an individual license upon request.
- (2) Failure to notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.

(c) The presumptive civil penalty for the following violations is: 1st offense one hundred dollars (\$100.00), 2nd offense two hundred fifty dollars (\$250.00), 3rd offense five hundred dollars (\$500.00).

- (1) Knowingly perpetuating an error of the Board.
  - (2) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he/she is not competent to perform or delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.
  - (3) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
  - (4) Using the title "Respiratory Care Practitioner", the letters "RCP, RTT, RT" or any facsimile or combination in any words, letters, abbreviations, or insignia or implying orally or in writing or indicating in any way that the person is a Respiratory Care Practitioner unless licensed by the Board.
- (d) The presumptive civil penalty for the following violations is: 1st offense two hundred fifty dollars (\$250.00), 2nd offense five hundred dollars (\$500.00), 3rd offense one thousand dollars (\$1000.00).
- (1) Practicing respiratory care without a license.
  - (2) Allowing unlicensed individuals under the person's supervision to practice respiratory care. Employ or solicit for employment unlicensed persons to practice respiratory care.
  - (3) Altering a license, permit or authorization issued by the Board.
  - (4) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation.
  - (5) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
  - (6) Performing services which the practitioner is not licensed to perform or performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
  - (7) Failing to properly make the disclosures required by 21 NCAC 61 .0308.
  - (8) Engaging in any act or practice that is hazardous to public health, safety or welfare.
  - (9) Committing an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
  - (10) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.
  - (11) Circulating false, misleading, or deceptive advertising.
  - (12) Willfully making or filing a false report or record, or willfully failing to file a report or

- record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner.
- (13) Filing a false continuing education documentation report or record.
  - (14) Violating a lawful order of the board or aiding, abetting or assisting any person in a violation of a lawful order of the Board.
- (e) The presumptive civil penalty for the following violations is: 1st offense one thousand dollars (\$1000.00), 2nd offense one thousand dollars (\$1000.00), 3rd offense one thousand dollars (\$1000.00).
- (1) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.
  - (2) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
  - (3) Paying or receiving any commission or bonus, or any kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.
  - (4) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation.
  - (5) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.

*History Note: Authority G.S. 90-666; Eff. April 1, 2004.*

**21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS**

(a) Each year on or before the expiration date of the respiratory care practitioner's license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or (2) of this Paragraph:

- (1) Provide proof of completion of 10 hours each year of Category I Continuing Education (CE) to the Board. "Category I" Continuing Education is defined as participation in an educational activity directly related to

respiratory care, which includes any one of the following:

- (A) Lecture – a discourse given for instruction before an audience or through teleconference.
  - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution.
  - (C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest.
  - (D) Seminar – a directed advanced study or discussion in a specific field of interest.
  - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.
  - (F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.
- (2) Retake the certified respiratory therapist (CRT) examination with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Neonatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.

(b) Licensees shall list on a form provided by the Board, the Category I CE courses completed that meet the 10-hour requirement, as well as specified subject matter of the courses completed. Space shall be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements, a notation of the examination taken with the date taken is to be placed on the form.

(c) CE course work must be completed through one or more of the providers of CE as identified in this Section of the Rules or CE programs approved by the Board.

(d) All CE course work must be directly related to the practice of respiratory care or to expanding the scope of practice for respiratory care practitioners.

(e) CE courses approved by the American Association for Respiratory Care or the Accreditation Council for Continuing Medical Education (ACCME) are approved for Respiratory Care Practitioners to receive continuing education credit and are not required to make application to the Board or pay a fee.

(f) The following Certification Programs are approved for Respiratory Care Practitioners to receive continuing education

credit. The sponsor is not required to make application to the Board or pay a fee. Certification or recertification as an instructor in ACLS, PALS, or NRP shall receive the same CE credit as listed.

- (1) Advanced Cardiac Life Support (ACLS) (10 hours for Initial certification and 5 hours for re-certification)
  - (2) Pediatric Advanced Life Support (PALS) (10 hours for Initial certification and 5 hours for re-certification)
  - (3) Neonatal Resuscitation Protocol (NRP) (8 hours for Initial certification and 4 hours for re-certification)
  - (4) Basic Life Support (BLS) Instructor (8 hours for Initial certification and 4 hours for re-certification)
- (g) The Board shall charge the following fees to all other providers of CE for approval of continuing education programs:
- (1) Programs approved for 1 to 2 hours of CE: Non Profit Organizations and Government Agencies, ten dollars (\$10.00); For Profit Organizations, twenty dollars (\$20.00).
  - (2) Programs approved for 3 to 5 hours of CE: Non Profit Organizations and Government Agencies, twenty dollars (\$20.00); For Profit Organizations, forty dollars (\$40.00).
  - (3) Programs approved for 6 to 10 hours of CE: Non Profit Organizations and Government Agencies, forty dollars (\$40.00); For Profit Organizations, eighty dollars (\$80.00).
  - (4) Programs approved for 11 or more hours of CE: Non Profit Organizations and Government Agencies, eighty dollars (\$80.00); For Profit Organizations, one hundred fifty dollars (\$150.00).

(h) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.

(i) The Board shall grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.

- (1) having served in the regular armed services of the United States at least 6 months of the 12 months immediately preceding the license renewal date; or
- (2) having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the twelve months immediately preceding the licensee renewal date.

*History Note: Authority G.S. 90-652(2)(13); 90-660(b)(9); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. April 1, 2004.*



**TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 02C .0102 DEFINITIONS**

The following definitions shall apply throughout this Chapter and to all forms prescribed pursuant to this Chapter unless the context indicates otherwise:

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Adoption by agency" means the date that an agency takes final action on a rule.
- (4) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (5) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- (6) "Code" means the North Carolina Administrative Code.
- (7) "Commission" means the Rules Review Commission.
- (8) "Form" means an original form provided by OAH; a computer generated form from the OAH website, or from a CD or a diskette provided by OAH; a legible photocopy of an original OAH form; or an agency generated form identical to the OAH form.
- (9) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- (10) "Original" means a copy of the document marked or stamped as such.
- (11) "Publication" includes publication on the OAH website or in the Register or entry into the Code.
- (12) "Register" means the North Carolina Register.
- (13) "Repeal" means the deletion of the entire text of a rule. When a rule is repealed, that rule number shall not be used again. The number, rule name, and final history note shall remain in the Code permanently for publication and reference purposes.

*History Note: Authority G.S. 150B-21.17; 150B-21.18; Temporary Adoption Eff. November 1, 1995; Eff. April 1, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 1, 2003; Amended Eff. April 1, 2004.*

**26 NCAC 02C .0108 GENERAL FORMAT INSTRUCTIONS**

An agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

- (1) Paper Specifications:
  - (a) 8½ by 11 inch plain white paper, 16 to 32 lb.;
  - (b) one side of the sheet only;
  - (c) black ink;

- (d) 10 point font size;
  - (e) portrait print (8½ x 11), no landscape printing (11 x 8½);
  - (f) numbered lines on the left margin with each page starting with line 1;
  - (g) 1.5 line spacing;
  - (h) page numbers centered at the bottom of the page for each rule that has more than one page of text; and
  - (i) no staples.
- (2) Tab and Margin Settings:
    - (a) tab settings for all rules shall be set relative from the left margin at increments of .5;
    - (b) text shall be with a one inch margin on all sides.
  - (3) The Introductory Statement shall start on page 1, line 1 of each rule.
  - (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. One line shall be skipped between the introductory statement and each chapter, subchapter, and section name.
  - (5) One line shall be skipped before starting the line that provides the rule number and rule name. The decimal in the rule number shall be placed in position 1. One tab shall be between the rule number and rule name. The rule name shall be in capital letters and the rule number and name shall be in bold print.
  - (6) Body of the Rule:
    - (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
      - (i) adoptions - new text shall be underlined;
      - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined;
      - (iii) repeals - text of the rule shall not be included;
    - (b) there shall be no lines skipped in the body of the rule except before and in tables;
    - (c) the first level of text shall be flush left and with two spaces after the closing parenthesis if the paragraph is identified by a letter;
    - (d) the second level of text shall start with one tab and one hanging indent after the closing parenthesis;
    - (e) the third level of text shall start with two tabs and one hanging indent after the closing parenthesis;
    - (f) the fourth level of text shall start with three tabs and one hanging indent after the closing parenthesis;

- (g) the fifth level of text shall start with four tabs and one hanging indent after the closing parenthesis;
  - (h) the sixth level of text shall start with five tabs and one hanging indent after the closing parenthesis.
- (7) Punctuation shall be considered part of the word when there are no spaces between the punctuation and the word. When underlining or striking through text:
- (a) when a word is deleted, the punctuation shall also be struck through with the previous word; and
  - (b) when punctuation is added, the existing word shall be struck through and followed by the word and punctuation underlined.
- The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.
- (8) Charts or Tables shall be in a format that is accommodated by the most recent version of Word for Windows.
- (9) History Note Specifications:
- (a) shall be in italic font;
  - (b) shall start on the second line following the body of the rule;
  - (c) the first line of the History Note shall start in the first position; all lines following shall be two tabs;
  - (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
  - (e) the effective date of the original adoption of the rule shall be the next line following the authority. The abbreviation "Eff." shall be followed by this date;
  - (f) on the line following the "Eff." date, the amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
  - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date)";
  - (h) an emergency rule shall be listed as a separate item in the history note with the following words: "Emergency (Adoption, Amendment, or Repeal) Eff. (date)";
  - (i) the repealed date of a rule shall be the last line of the history note and start

- (j) with the words "Repealed Eff." followed by the date;
  - (j) all items in the history note shall be separated by semicolons with the last line ending with a period;
  - (k) all history of a rule shall be in chronological order following the authority for the rule;
  - (l) all dates in the history note shall be complete with the month spelled out, and shall not contain any abbreviations.
- (10) Numbers within the text shall be as follows:
- (a) numbers from one to nine shall be spelled out;
  - (b) figures shall be used for numbers over nine;
  - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
- (11) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

Note: Examples of proper formatting can be found on the OAH website located at [www.ncoah.com/rules](http://www.ncoah.com/rules).

*History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;  
Temporary Adoption Eff. November 1, 1995;  
Eff. April 1, 1996;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. July 1, 2003;  
Amended Eff. April 1, 2004.*

**26 NCAC 02C .0502 PUBLICATION OF A TEMPORARY RULE**

An agency shall submit each temporary rule for publication in the Code with the following:

- (1) An original Temporary Rulemaking Findings of Need form and copies (Rule .0503 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the temporary rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
  - (a) an introductory statement (Rule .0404 of this Subchapter);
  - (b) the body of the rule (Rule .0405 of this Subchapter);
  - (c) the history note (Rule .0406 of this Subchapter).
- (4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).

## SECTION .0100 - HEARING PROCEDURES

*History Note:* Authority G.S. 150B-21.19;  
*Temporary Adoption Eff.* November 1, 1995;  
*Eff.* April 1, 1996;  
*Amended Eff.* April 1, 1997;  
*Temporary Amendment Eff.* July 1, 2003;  
*Amended Eff.* April 1, 2004.

**26 NCAC 02C .0503 TEMPORARY RULEMAKING FINDINGS OF NEED FORM**

- (a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form and two copies for a rule to be submitted for publication in the Code.
- (b) The agency head shall sign the original form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

*History Note:* Authority G.S. 150B-21.19;  
*Temporary Adoption Eff.* November 1, 1995;  
*Eff.* April 1, 1996;  
*Temporary Amendment Eff.* July 1, 2003;  
*Amended Eff.* April 1, 2004.

**26 NCAC 02C .0703 PUBLICATION FORM**

- (a) An agency shall submit a completed typed Publication on the OAH Website form for a rule to be submitted for publication in the OAH website.
- (b) Except as specified in Paragraph (c) of this Rule, the agency shall submit a single form for each permanent rule submitted for publication.
- (c) The agency shall submit a single form for proposed temporary rules when:
- (1) the rules are codified in the same chapter in the Code;
  - (2) the rules are scheduled for the same public hearing(s); and
  - (3) the comment period is the same.
- (d) The agency head or rulemaking coordinator shall sign the Publication form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such delegation.

*History Note:* Authority G.S. 150B-21.19;  
*Temporary Adoption Eff.* July 1, 2003;  
*Eff.* April 1, 2004.

**26 NCAC 03 .0101 GENERAL**

- (a) The Rules of Civil Procedure as contained in G.S. 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.
- (b) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.
- (c) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic mail by an attached file either in PDF format or a document that is compatible with or convertible to the most recent version of Word for Windows. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@ncmail.net. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document and one copy is received by OAH within seven business days following the faxed or electronic transmission. Other electronic transmissions, for example, electronic mail without attached file as specified in this Paragraph, shall not constitute a valid filing with the Office of Administrative Hearings.
- (d) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.
- (e) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

*History Note:* Authority G.S. 7A-750; 7A-751(a);  
 150B-40(c);  
*Eff.* August 1, 1986;  
*Amended Eff.* April 1, 2004; April 1, 2001; August 1, 2000;  
 February 1, 1994; July 1, 1992; May 1, 1989; January 1, 1989.

## RULES REVIEW COMMISSION

*This Section contains information for the meeting of the Rules Review Commission on Thursday, May 20, 2004, 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, May 14, 2004 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  
Jeffrey P. Gray

#### Appointed by House

Jennie J. Hayman - Chairman  
Graham Bell  
Dana E. Simpson  
Dr. John Tart

### RULES REVIEW COMMISSION MEETING DATES

May 20, 2004  
June 17, 2004                      July 15, 2004  
August 19, 2004                      September 16, 2004  
October 21, 2004                      November 18, 2004  
December 16, 2004

### Commission Review/Administrative Rules

*Log of Filings (Log #209)  
March 21, 2004 through April 20, 2004*

#### DEPARTMENT OF AGRICULTURE

Adoptions by Reference                      02 NCAC 09B .0116                      Amend

#### NC STRUCTURAL PEST CONTROL COMMITTEE

Definitions                      02 NCAC 34 .0102                      Amend  
Subterranean Termite Prevention/Res Bldgs Under                      02 NCAC 34 .0505                      Amend  
Wood Destroying Organisms Records                      02 NCAC 34 .0604                      Amend  
Contractual Agreements for Wood-Destroying Organ                      02 NCAC 34 .0605                      Amend

#### DEPARTMENT OF AGRICULTURE

Gate Fee                      02 NCAC 43L .0104                      Repeal  
Period for Shed Lease                      02 NCAC 43L .0105                      Repeal  
Temporary or Seasonal Rental Basis                      02 NCAC 43L .0106                      Repeal  
Length of Agreement                      02 NCAC 43L .0107                      Repeal  
Commercial Truckers                      02 NCAC 43L .0108                      Repeal  
Gate Fee                      02 NCAC 43L .0113                      Repeal  
Adjustment of Rentals                      02 NCAC 43L .0114                      Repeal  
Assessment of Truckers Etc.                      02 NCAC 43L .0115                      Repeal  
Exemptions                      02 NCAC 43L .0116                      Repeal  
Base Prices                      02 NCAC 43L .0201                      Repeal  
Gate Fees                      02 NCAC 43L .0202                      Repeal  
Miscellaneous Fees                      02 NCAC 43L .0203                      Repeal  
Space Availability                      02 NCAC 43L .0204                      Repeal  
Space Limitations                      02 NCAC 43L .0205                      Repeal  
Truck Rent Basis                      02 NCAC 43L .0206                      Repeal  
Retail Buildings                      02 NCAC 43L .0401                      Repeal  
Gate Fees                      02 NCAC 43L .0402                      Repeal  
Farmers and Truckers Sheds                      02 NCAC 43L .0403                      Repeal  
Miscellaneous Fees                      02 NCAC 43L .0404                      Repeal  
Yearly Delivery Permit                      02 NCAC 43L .0405                      Repeal  
Space Availability                      02 NCAC 43L .0406                      Repeal  
Space Limitations                      02 NCAC 43L .0407                      Repeal  
Truck Rent Basis                      02 NCAC 43L .0408                      Repeal

**RULES REVIEW COMMISSION**

Fees for Special Events	02 NCAC 43L .0409	Repeal
Payment of Fees	02 NCAC 43L .0701	Repeal
Gate Fees	02 NCAC 43L .0702	Repeal
Nursery Dealer Certificate	02 NCAC 48A .1208	Amend
<b>STATE BANKING COMMISSION</b>		
Fees, Copies and Publication Costs	04 NCAC 03C .1601	Amend
<b>NC CEMETERY COMMISSION</b>		
Fees	04 NCAC 05A .0106	Adopt
<b>DHHS/MH/DD/SAS</b>		
Summary Suspension & Revocation Scope	10A NCAC 26C .0501	Adopt
Summary Suspension & Revocation Definitions	10A NCAC 26C .0502	Adopt
Summary Suspension & Revocation-Summary	10A NCAC 26C .0503	Adopt
Summary Suspension & Revocation-Revocation	10A NCAC 26C .0504	Adopt
License Issuance	10A NCAC 27G .0402	Amend
Operations During Licensed Period	10A NCAC 27G .0404	Amend
Communication Procedures for Out of Home Community	10A NCAC 27G .0506	Adopt
Scope	10A NCAC 27G .0601	Adopt
Definitions	10A NCAC 27G .0602	Adopt
Incident Response Requirements for Categories	10A NCAC 27G .0603	Adopt
Incident Reporting Requirements for Categories A &	10A NCAC 27G .0604	Adopt
Area Authority or County Program Management of Inc	10A NCAC 27G .0605	Adopt
Area Authority Requirements Concerning Complaints	10A NCAC 27G .0606	Adopt
Complaints Pertaining to Category A or Category B	10A NCAC 27G .0607	Adopt
Local Monitoring	10A NCAC 27G .0608	Adopt
Area Authority or County Program Reporting Require	10A NCAC 27G .0609	Adopt
Requirements Concerning the Need for Protective	10A NCAC 27G .0610	Adopt
<b>COMMISSION FOR HEALTH SERVICES</b>		
Definitions	10A NCAC 39A .0102	Amend
Migrant Health Program Services	10A NCAC 39A .0103	Amend
Co-Payments	10A NCAC 39A .0104	Amend
Reimbursement	10A NCAC 39A .0105	Amend
Eligible Migrants	10A NCAC 39A .0106	Amend
Eligible Providers	10A NCAC 39A .0107	Amend
Covered Services	10A NCAC 39A .0109	Amend
Payment Limitations	10A NCAC 39A .0111	Amend
Payment Limitations	10A NCAC 45A .0303	Amend
<b>DENR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>		
Outstanding Resource Waters	15A NCAC 02B .0225	Amend
Tar-Pamlico River Basin	15A NCAC 02B .0316	Amend
Toxic Air Pollutant Guidelines	15A NCAC 02D .1104	Amend
Purpose Scope and Permissible Open Burning	15A NCAC 02D .1901	Amend
Definitions	15A NCAC 02D .1902	Amend
Permissible Open Burning Without An Air Quality	15A NCAC 02D .1903	Amend
Air Curtain Burners	15A NCAC 02D .1904	Amend
Delegation to County Governments	15A NCAC 02D .1906	Amend
Exemptions	15A NCAC 02Q .0702	Amend
Modifications	15A NCAC 02Q .0706	Amend
Emission Rates Requiring a Permit	15A NCAC 02Q .0711	Amend
Wastewater Treatment Systems at Pulp and Paper Mil	15A NCAC 02Q .0714	Adopt
<b>DENR/DIVISION OF PARKS AND RECREATION AUTHORITY</b>		
Eligible Applicants	15A NCAC 12K .0102	Amend
Evaluation of Applications	15A NCAC 12K .0105	Amend
<b>DEPARTMENT OF TRANSPORTATION/DIVISION OF MOTOR VEHICLES</b>		
Renewal of Certification	19A NCAC 03G .0207	Amend
Cancellation of Certification	19A NCAC 03G .0209	Amend
<b>NC REAL ESTATE COMMISSION</b>		
Agency Agreements and Disclosure	21 NCAC 58A .0104	Amend
Advertising	21 NCAC 58A .0105	Amend
Handling and Accounting of Funds	21 NCAC 58A .0107	Amend
Retention of Records	21 NCAC 58A .0108	Amend
Broker-in-Charge	21 NCAC 58A .0110	Amend

***RULES REVIEW COMMISSION***

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Filing and Fees	21 NCAC 58A .0302	Amend
License Renewal Penalty for Operating While License	21 NCAC 58A .0503	Amend
Active and Inactive License Status	21 NCAC 58A .0504	Amend
Salesperson to be Supervised by Broker	21 NCAC 58A .0506	Amend
General Provisions	21 NCAC 58A .1801	Adopt
Definitions	21 NCAC 58A .1802	Adopt
Requirements for Licensure	21 NCAC 58A .1803	Adopt
Active Status	21 NCAC 58A .1804	Adopt
Renewal	21 NCAC 58A .1805	Adopt
Limitations	21 NCAC 58A .1806	Adopt
Affiliation with Resident Broker	21 NCAC 58A .1807	Adopt
Trust Monies	21 NCAC 58A .1808	Adopt
Advertising	21 NCAC 58A .1809	Adopt
Payment of Fees	21 NCAC 58A .1810	Adopt
Designation of Project Broker	21 NCA C 58B .0601	Adopt

## 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 <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>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
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	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
ABC v. Lake Point Restaurant, Inc. T/A Larkins on the Lake Bay Front Bar and Grill	03 ABC 1246	Hunter	01/01/04	18:17 NCR 1540
ABC Commission v LLPH Inc T/A Tsunami Sportsbar & Grill, 947 Carter Dr, Suite 4, Calabash, NC 28467	03 ABC 1530	Conner	02/05/04	
ABC Commission v. Chelsie Paul Grose, Brown Mountain Grocery And Service Station	04 ABC 0064	Chess	03/03/04	
ABC Commission v. Jose-Martin Ortega Ramirez T/A Dona Ole Rest.	04 ABC 0094	Gray	03/02/04	
ABC Commission v. Taqueria El Azteca Inc T/A Taqueria El Azteca	04 ABC 0095	Gray	03/02/04	
ABC Commission v. Raleigh Bryce Olive T/A Olives Cash Svc Ctr	04 ABC 0174	Gray	03/22/04	
<b><u>AGRICULTURE</u></b>				
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
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
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	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Frances H Abegg v Bryan E Beatty, Sec DCCPS	03 CPS 1359	Gray	01/23/04	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
Shirley Simmons v. Crime Control & Public Safety	03 CPS 2062	Gray	03/18/04	
Ruth Graham v. Crime Control & Public Safety	03 CPS 2123	Elkins	03/23/04	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
Yelton's Healthcare v DHHS, Div of Fac. Svcs, Group Care Lic Sec	00 DHR 0249	Gray	01/16/04	
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Richard Hart & Jeannette Hart, Little People Day Car, ID 3355048	01 DHR 1464	Wade	11/14/03	
v. Div of Child Dev Health & Human Services	01 DHR 1464	Wade	11/14/03	
Sunshine Schools, Inc. ID No. 9255424 v. DHHS, Div. of Child Dev.	02 DHR 0708	Wade	11/24/03	18:14 NCR 1209
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Lee Co. Dept of Social Services v. DHHS	02 DHR 1021	Elkins	12/01/03	18:14 NCR 1212
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel	02 DHR 1103	Lassiter	05/12/03	

**CONTESTED CASE DECISIONS**

Registry Section					
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	02 DHR 1672	Wade	06/10/03		
June Locklear					
Bibby's Group Home, Billy McEachern v. Mental Health Licensure and	02 DHR 1749	Gray	12/08/03		
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		
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03		
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03		
Tanile Woodberry, By & Through Her Attorney-in-Fact, Linda Monroe v. DHHS, Division of Medical Assistance	02 DHR 2212	Chess	11/06/03	18:15 NCR	1353
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		
Lawyers Glen Retirement Living Ctr, Charlotte Elliott v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03		
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		
Valencia L Brown v Division of Medical Assistance (DMA)	03 DHR 0099	Chess	11/17/03		
Sidney Elkins, Debra Elkins v. Columbus Co Dept of Social Services	03 DHR 0105	Gray	03/10/04		
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		
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03	18:12 NCR	1011
Little Angels Child Care Center v Arnette Cowan, Sup of Spec Nut. Prog.	03 DHR 0229	Lassiter	11/24/03		
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03		
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03		
Vivian P Bailey v. DHHS, Div. of Child Development	03 DHR 0296	Gray	12/18/03		
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03		
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03		
Caatherine Williams v. DHHS	03 DHR 0320	Mann	07/17/03		
Rachel Peek,Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03		
Penny Yvette McCullers v DHHS, Div. of Facility Services	03 DHR 0336 <sup>0</sup>	Mann	01/08/04	18:17 NCR	1543
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 Basnight v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03		
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03		
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		
Total Renal Care of NC, LLC v DHHS, Div. of Facility Services, CON Section & Bio-Medical Applications of NC	03 DHR 0499	Conner	12/09/03	18:17 NCR	1548
Charlotte Orthopedic Specialists, P.A. v DHHS, Div. of Facility Svcs CON Section & Orion Imaging LLC Mercy Hospital Inc d/b/a Carolinas Medical Center-Pineville	03 DHR 0505	Gray	12/23/03	18:19 NCR	1746
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03		
Robert L Scott v DHHS	03 DHR 0527	Conner	12/02/03		
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03		
Penny Yvette McCullers v DHHS, Div. of Facility Services	03 DHR 0558 <sup>0</sup>	Mann	01/08/04	18:17 NCR	1543
The Presbyterian Hospital v. DHHS, Division of Facility Services and Mooresville Hosp Mgmt Assoc Inc d/b/a Lake Norman Reg Med Ctr	03 DHR 0567	Wade	12/19/03	18:15 NCR	1362
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03		
Becky Wood, Guardian Rep The Arc/NCLifeguardianship on behalf of Mary Short (Ward) v. Richard Visingardi, Dir, Div of MH, DD, SAS	03 DHR 0575	Chess	12/22/03		
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		
Charles Wakild & Susan Wakild v DENR, Div of Coastal Management	03 DHR 0663	Morrison	12/09/03		
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03		
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		



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Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03	
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	
Humans United Giving Greater Services "Huggs" v DHHS	03 DHR 0767	Lassiter	01/15/04	
Essie Mae Crawley Davis v. DHHS, Division of Facility Services	03 DHR 0773	Elkins	03/02/04	
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	
Sharmia Barnes v DHHS, Div of Facility Services	03 DHR 0830	Conner	01/05/04	
Pamela Powell v. DMA Outpatient Therapy	03 DHR 0834	Lassiter	10/13/03	
Angela Carter Precious Love Turtledove v. Tarin Goodwin, St. of NC, DCD	03 DHR 0850	Connor	09/23/03	
Donald Eugene Lowery by & through his guardian, Dennis Parise v. CAP (DMA) Div. of Medical Assistance	03 DHR 0868	Gray	12/17/03	
Nequita Williams v. DHHS, Div. of Medical Assistance	03 DHR 0895	Wade	11/21/03	
Native Angels Home Care Agency, Inc. v. DHHS, Div. of Facility Services, Certificate of Need Section & Community Health, Inc. d/b/a Community Home Care and Hospice; and Consolidated Health Services	03 DHR 0903	Conner	02/20/04	18:20 NCR 1804
Ali Alsarar d/b/a University Market v. DHHS	03 DHR 0917	Conner	12/02/03	
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	
Rose McCallum, Individually & as Owner & Representative of NC Preschool Academy & Tina Octetree, Individually & as Director & Representative Of NC Preschool Academy v. DHHS, Div. of Public Health	03 DHR 0951 <sup>11</sup>	Elkins	02/02/04	18:17 NCR 1571
Rose McCallum, Individually & as Owner & Representative of NC Preschool Academy & Tina Octetree, Individually & as Director & Representative Of NC Preschool Academy v. DHHS, Div. of Public Health	03 DHR 0952 <sup>11</sup>	Elkins	02/02/04	18:17 NCR 1571
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03	
Nazih Hasan & Emao Hasan, Nes Convenient Mart v DHHS	03 DHR 0985	Lassiter	10/31/03	
Victor J Gray v Dorothea Dix Hospital	03 DHR 1039	Morrison	09/29/03	
Pine Forest Rest Home v DHHS, Div. of Facility Services	03 DHR 1066	Gray	10/10/03	
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03	
Heather M Wood v. DHHS	03 DHR 1083	Morrison	10/30/03	
Lisa S Lincoln, Honeybees Creative Ctr v DHHS, Nutrition Branch	03 DHR 1091	Elkins	11/13/03	
Wardeh Abukeshk v DHHS	03 DHR 1117	Gray	12/10/03	
Esther M Huntley, Children Learning Ctr, Formerly Rainbow Nursery Sch v. DHHS, Division of Child Development	03 DHR 1118	Elkins	12/23/03	
Jaris Davis v. DHHS, Div. of Facility Services	03 DHR 1136	Gray	10/07/03	
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03	
Sherry Autry v. DHHS	03 DHR 1204	Elkins	12/22/03	
Angela Sadler v. DHHS, Div. of Facility Services	03 DHR 1210	Conner	11/04/03	
Bernard Frederic v Div of MH/DD/SAS	03 DHR 1298	Conner	01/07/04	
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03	
LaQuasha K Massey v. DSS, Mecklenburg County	03 DHR 1375	Elkins	12/16/03	
David L Hayden Sr, Margaret R Hayden v DHHS	03 DHR 1405	Morrison	12/19/03	18:16 NCR 1483
Calvin Harris, Jr. v. Health Care Personnel Registry	03 DHR 1434	Wade	10/06/03	
Karen J Andrews v. DHHS	03 DHR 1461	Lassiter	11/25/03	
Apple Nursing Services v. DHHS	03 DHR 1488	Chess	12/10/03	
Coastal Carolina Health Care PA d/b/a Coastal Carolina Imaging (P-6766-03) V DHHS Div of Facility Svcs, Certificate of Need Section	03 DHR 1496	Lassiter	11/06/03	
Roger William Suttles v. Broughton Hospital	03 DHR 1536	Gray	12/22/03	
Barbara Hammond for Dennis Hammond v. DHHS	03 DHR 1539	Elkins	12/23/03	
Kimberly Shepard v Western NC Group Home for Autistic Persons	03 DHR 1557	Gray	02/10/04	
Virginia Ruth Mahala v. DHHS, Office of Legal Affairs	03 DHR 1574	Conner	03/10/04	
Karoline Hatfield Kranicz v. DHHS, Div. of Facility Services	03 DHR 1584	Gray	01/16/04	
Delaine Hairston v DHHS	03 DHR 1604	Mann	11/25/03	
Linda Joyce Lindsey v DHHS, Div of Facility Services	03 DHR 1605	Wade	02/11/04	
Stevie Meadows v DHHS, Div. of Facility Services	03 DHR 1607	Lassiter	01/28/04	
Tammy Hoyle for Leslie Hoyle v DHHS	03 DHR 1614	Elkins	01/29/04	
Jermaine L Thurston Sr v. Health Care Personnel Registry	03 DHR 1622	Elkins	01/26/04	
Ronald Bryan Gatlyn v. Health Care Personnel Registry	03 DHR 1655	Lassiter	10/28/03	
Sheila Ferrell Meeks v Office of Administrative Hearings	03 DHR 1672	Lassiter	12/02/03	
Willie S Neely v DHHS, Div. of Facility Services	03 DHR 1674	Gray	11/20/03	
Mohammed Khalil v DHHS	03 DHR 1694	Mann	02/03/04	
Christine Gordon v Health Care Personnel Registry	03 DHR 1697	Elkins	12/16/03	
Doris Duff v DHHS, Div. of Facility Services	03 DHR 1720	Lassiter	12/02/03	
Rochelle M Jones v DHHS, Div of Facility Services	03 DHR 1734	Wade	02/11/04	
Paditra C Dalton v DHHS, Div of Facility Services	03 DHR 1738	Elkins	01/28/04	
Lalita Russell, Garfield Home Day Care v DHHS, Div of Child Dev.	03 DHR 1740	Lassiter	01/29/04	
Daniel H. Moore v. DHHS, Div. of Facility Services	03 DHR 1753	Lassiter	11/20/03	
Angela Kay Hudson v. DHHS, Div. of Facility Services	03 DHR 1789	Elkins	12/19/03	
Adel Khatib v DHHS	03 DHR 1849	Mann	01/28/04	
Patricia A Fox, Adm, Community Care of Jackson #1 v. Div. of Facility Services, Adult Care Licensure Section	03 DHR 1856	Conner	12/18/03	
Thristopher Todd Smith v DHHS, Div. of Facility Services	03 DHR 1896	Elkins	02/25/04	
Kimberly D Hamilton v. DHHS, Div of Child Development	03 DHR 1978	Chess	01/07/04	
Iris Gail Smith on behalf of her son Tacory D Smith v DHHS, Div. of Medical Assistance	03 DHR 2119	Elkins	02/10/04	
Linda's Child Day Care Center, Inc., Linda N. Powers v OAH	03 DHR 2120	Gray	03/03/04	
Juliana Worthy Gladu, Childrens Cottage v State of NC, OAH	03 DHR 2208	Lassiter	01/08/04	
Dorothy Beaver Phillips v Health Care Personnel Registry	03 DHR 2290	Gray	03/05/04	

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Vodrick D Bess v DHHS, Div of Facility Svcs, Health Care Pers. Registry	03 DHR 2332	Gray	01/23/04	
Donnie Hugh Shelton v DHHS, Division of Medical Assistance	03 DHR 2339	Wade	02/25/04	
Libby R Moore v DHHS, Division of Medical Assistance	03 DHR 2379	Elkins	02/24/04	
Carol Ingram v DHHS, Health Care Personnel Registry	03 DHR 2429	Elkins	02/24/04	
Jacqueline M. Johnson v. DHHS, Division of Facility Services	03 DHR 2446	Elkins	03/23/04	
Janet Enemal v NC Nurse Aide	04 DHR 0011	Lassiter	02/11/04	
D.M. a minor by his guardian J Timothy M v DHHS	04 DHR 0051	Creech	03/04/04	18:20 NCR 1830
Antje Kromberg v DHHS	04 DHR 0058	Morrison	02/17/04	
LaDonna K. Brewington v. DHHS	04 DHR 0221	Elkins	03/25/04	

**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	
Jamey Darwin Raby v. Alarm Systems Licensing Board	03 DOJ 1355	Conner	03/24/04	

Private Protective Services Board

John Curtis Howell v. Private Protective Services Board	02 DOJ 1562 <sup>10</sup>	Lassiter	12/31/03	
John Curtis Howell v. Private Protective Services Board	03 DOJ 0214 <sup>10</sup>	Lassiter	12/31/03	
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	
Kenneth Wesley Eakes v. Private Protective Services Board	03 DOJ 1383	Conner	03/23/04	
Jason William Kane v Private Protective Services Board	03 DOJ 1708	Morrison	10/28/03	
George Donald Dixon, Jr v. Private Protective Services Board	03 DOJ 1924	Morrison	12/22/03	
Thomas Austin Atchison v. Private Protective Services Board	03 DOJ 1925	Morrison	12/23/03	18:15 NCR 1366

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
Joshua Steven McCraw v Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1696	Conner	12/02/03	
Joshua Phillip Grant v Sheriffs' Education & Training Standards Comm.	02 DOJ 1787	Wade	10/27/03	
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	
Derek A Cousin v Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0250	Gray	11/13/03	
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03	
Alexander Draft: Registered Agent/Owner of A.D. Police Svcs., Inc. v. DOJ, Company Police Program	03 DOJ 0484	Mann	10/17/03	
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	
Kenneth Earl Brantley v Sheriffs' Educ & Trng Stds. Comm	03 DOJ 0604	Gray	11/14/03	
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03	
William Kelly Moore v Criminal Justice Educ & Trng Stds. Comm	03 DOJ 1068	Morrison	11/12/03	
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03	
Loy S. Lentz Jr v. Sheriffs' Educ. & Trng. Stds. Comm.	03 DOJ 1229	Gray	10/02/03	
William Todd Streeter v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1243	Chess	12/08/03	
Dawn Wilkins Gilmore v. Sheriffs' Educ. & Trng. Stds. Comm	03 DOJ 1244	Morrison	12/17/03	
Robert Lee Way v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1263	Chess	12/08/03	
Charles D Metters, Jr. v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1471	Chess	12/09/03	
Garry Lamount Lavender v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1642	Chess	01/13/04	
Damon Cunningham v. Dept of Justice, Company Police Program	03 DOJ 2112	Lassiter	01/23/04	

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	
J W Walton v DST, Retirement Systems Division	03 DST 0933	Gray	01/30/04	18:17 NCR 1578

DEPARTMENT OF PUBLIC INSTRUCTION

Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03	
Mary Margaret Davis v Dept of Public Instruction	02 EDC 0155	Gray	12/19/03	
Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03	
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03	

ENVIRONMENT AND NATURAL RESOURCES

C B Roberson, Inc & Southside Oil Co, Inc v Env Mgmt Commission	95 EHR 0274 <sup>12</sup>	Gray	02/04/04	
C B Roberson, Inc & Southside Oil Co, Inc v Env Mgmt Commission	95 EHR 0275 <sup>12</sup>	Gray	02/04/04	
C B Roberson, Inc & Southside Oil Co, Inc v Env Mgmt Commission	95 EHR 0276 <sup>12</sup>	Gray	02/04/04	
C B Roberson, Inc & Southside Oil Co, Inc v Env Mgmt Commission	95 EHR 0277 <sup>12</sup>	Gray	02/04/04	
C B Roberson, Inc & Southside Oil Co, Inc v Env Mgmt Commission	95 EHR 0278 <sup>12</sup>	Gray	02/04/04	
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 <sup>1</sup>	Chess	05/14/03	
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03	

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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, Div. of Coastal Management	02 EHR 1078	Wade	06/09/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119 <sup>1</sup>	Chess	05/14/03	
Raphael J Scharf & wife Guylene Scharf v. DENR	02 EHR 1155	Gray	11/24/03	
Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03	
Raleigh-Durham Airport Authority v DENR, Div. of Water Quality	02 EHR 1648	Gray	12/19/03	
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	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242	Lassiter	10/30/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242 <sup>2</sup>	Lassiter	10/30/03	
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0254 <sup>6</sup>	Lassiter	10/30/03	
Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an uninc assoc) Alberta Anderson, Cameron Anderson, Jean Black Richard Black, Walter S Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith Jr, Vassilia Smith v. Water Quality Comm, Env Mgmt Comm and Piedmont Triad Airport Authority	03 EHR 0345	Gray	01/08/04	
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03	
Charles Wakild & Susan Wakild v DENR, Div. of Coastal Mgmt & Rick Gray	03 EHR 0663	Morrison	12/09/03	
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	
J B Hooper v DENR	03 EHR 0876	Lassiter	10/22/03	
W E Ormond v DENR, Div of Waste Management	03 EHR 0883	Gray	01/21/04	
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	
Lorraine E. Caracci v. Nash Co. Health Dept. Env. Health	03 EHR 0986	Gray	11/26/03	
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	
Robert A Valois v. Coastal Resources Commission	03 EHR 1125	Elkins	11/18/03	
St. Paul's Lutheran Church v. DENR	03 EHR 1151	Morrison	10/01/03	
Quible & Assoc PC; Joseph S Lassiter agent for Wilma M Midgett v. DENR, Div of Coastal Management	03 EHR 1193	Elkins	11/06/03	
Connell E Purvis v DENR, Div of Marine Fisheries	03 EHR 1228	Elkins	11/06/03	
Jerry B Lytton v. Mecklenburg County Health Department	03 EHR 1850	Morrison	12/29/03	
In the Matter of Willie Sloan v DENR	03 EHR 1927	Elkins	02/13/04	
Kenneth L Owen v. DENR	03 EHR 2276	Wade	03/12/04	
<b><u>HEARING AID DEALERS &amp; FITTERS BOARD</u></b>				
Robert H Knox v. State Hearing Aid Dealers & Fitters Board	03 HAF 1785	Morrison	12/30/03	
<b><u>HUMAN RELATIONS FAIR HOUSING</u></b>				
Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03	
Orange County Human Relations on behalf of Ginny Wolpin and Ginny Wolpin v. Cornerstone Realty Income Trust, Inc.	03 HRC 1116	Elkins	03/24/04	
Legislative Testor & Afflant: Charliciar Pratt & Family v Durham Co Clerk of Court & Records Division of NC	03 HRC 1886	Lassiter	02/13/04	
<b><u>TEACHERS' &amp; STATE EMPLOYEES COMP. MAJOR MED PLAN</u></b>				
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	
Carol W Walker v. Teachers' & State Emp. Comp Major Medical Plan	02 INS 1306	Conner	12/19/03	18:15 NCR 1356
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03	
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03	
Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03	
Barbara Jean Gribble v Teachers' & St Emp. Comp Major Medical Plan	03 INS 1130	Mann	12/31/03	
David C Karasow v St. of NC Teachers' & St Emp Comp Maj. Med Plan	03 INS 1227	Chess	11/20/03	
Cathy Penney v Teachers' & State Emp Comp Major Medical Plan	03 INS 1459	Gray	12/04/03	
Harold L. Bastiste v. State Health Plan	03 INS 1486	Wade	03/12/04	18:21 NCR 1924
Heather A Smith v. Teachers & St Emp Comp Major Medical Plan	03 INS 1558	Morrison	12/12/03	
<b><u>MISCELLANEOUS</u></b>				
Sara Parker & Deirdre M Parker v. NC Utilities Commission	04 MIS 0305	Elkins	03/23/04	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
Alvin Earl Williams v Dir of Cumberland Co Dept of Social Services	00 OSP 1490	Chess	11/05/03	
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 <sup>4</sup>	Lassiter	09/08/03	
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03	

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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	
Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03	
James Earl Ray Artis v. East Carolina University	02 OSP 0274	Gray	03/01/04	
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03	
Angie Richardson v Department of Correction	02 OSP 0867 <sup>9</sup>	Wade	11/14/03	
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	
Angie Richardson v Department of Correction	02 OSP 1027 <sup>9</sup>	Wade	11/14/03	
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 <sup>4</sup>	Lassiter	09/08/03	
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03	
James Thomas Kinlaw v. ESC of NC	02 OSP 1343	Wade	10/23/03	
Norman Burton v. Chatham County	02 OSP 1483 <sup>2</sup>	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 <sup>3</sup>	Gray	07/23/03	
Norman Burton v. Chatham County	02 OSP 1625 <sup>2</sup>	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	
Leonard Williams v Durham Co DSS, Children's Services	02 OSP 1681	Elkins	01/28/04	
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 <sup>3</sup>	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	
C.W. McAdams v. Division of Motor Vehicles	02 OSP 2265	Conner	11/14/03	
Michael J Stolarik Sr v. Piedmont Behavioral Health Care	02 OSP 2293	Chess	12/22/03	
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	
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	
Dennis D Nielsen v DOC, Div of Community Correction	03 OSP 0195	Wade	02/06/04	
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03	
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03	
Elmer Jack Smith v Employment Security Commission of NC	03 OSP 0295	Elkins	01/29/04	
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, Swannanoa 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, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03	
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03	
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03	
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 <sup>8</sup>	Chess	10/20/03	
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03	
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 <sup>8</sup>	Chess	10/20/03	
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	
Sharon D Barnes v Satana Deberry, DHHS	03 OSP 0669	Gray	01/16/04	
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	
Leslie AllenWhittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03	
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03	
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769 <sup>11</sup>	Conner	12/22/03	
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0770 <sup>11</sup>	Conner	12/22/03	
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0771 <sup>11</sup>	Conner	12/22/03	
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	
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 0840 <sup>13</sup>	Gray	03/01/04	
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 0841 <sup>13</sup>	Gray	03/01/04	
Joseph Nichols v UNC at Chapel Hill	03 OSP 0857	Gray	12/04/03	
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03	
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0862 <sup>5</sup>	Morrison	09/29/03	
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0863 <sup>5</sup>	Morrison	09/29/03	
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03	
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 <sup>7</sup>	Lassiter	11/10/03	
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03	
Everette C Body v Department of Correction	03 OSP 0885	Conner	11/12/03	
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03	
Dawn H Nelson v Department of Correction	03 OSP 0980	Chess	02/11/04	
Ayesha Neal-Harry v Department of Correction	03 OSP 0974	Gray	01/20/04	
Edith C Fisher v. Cabarrus Health Alliance	03 OSP 1010	Conner	12/22/03	

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Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03	
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03	
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03	
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03	
Roberta Lane v DOC	03 OSP 1077	Conner	10/29/03	
Mable Lynn Kelly v. SEAA	03 OSP 1129	Chess	10/20/03	
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03	
Mable Lynn Kelly v SEAA	03 OSP 1184	Chess	10/20/03	
Marcella Thome v Department of Correction	03 OSP 1225	Elkins	11/14/03	
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03	
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 <sup>7</sup>	Lassiter	11/10/03	
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 <sup>7</sup>	Lassiter	11/10/03	
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 <sup>7</sup>	Lassiter	11/10/03	
Luvae J Wall v. DHHS, Payroll Office	03 OSP 1259	Morrison	12/02/03	
Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03	
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03	
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03	
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03	
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 1339 <sup>13</sup>	Gray	03/01/04	
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 1433 <sup>13</sup>	Gray	03/01/04	
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03	
Victor Marc Sain v. Catawba Valley Community College	03 OSP 1380	Conner	11/19/03	
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03	
Willie Allen v Swannanoa Youth Dev Ctr (DJJDP)	03 OSP 1412	Conner	01/05/04	
Gloria Bennett v Dept of Correction DART Cherry Program	03 OSP 1428	Morrison	12/04/03	
Richard Todd McLean v. John Umstead Hospital	03 OSP 1448	Wade	11/26/03	
Charles G Home Jr v. DOC	03 OSP 1479	Lassiter	10/28/03	
Charles G Home Jr v. DOC	03 OSP 1480	Lassiter	10/29/03	
Patricia Ann Palmer v NC State University	03 OSP 1481	Wade	02/11/04	
Yolanda Lopez v DOC Harnett Correctional Inst	03 OSP 1501	Elkins	12/22/03	
Mable Lynn Kelly v State Educ. Assistance Authority	03 OSP 1502	Chess	12/03/03	
Stephen Wyatt Edwards v. Crime Control &PublicSafety, St Hwy Patrol	03 OSP 1554	Gray	03/03/04	18:20 NCR 1838
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03	
Jesse C Whitaker v. Facilities Mgmt Operations of NCSU	03 OSP 1645	Lassiter	11/26/03	
Peter A Fillare v. NCSU Dining	03 OSP 1646	Lassiter	12/02/03	
A Louise Nilsen Mankes v. Dr. Gatewood, UNC Gen Admin Dept NCSEAA	03 OSP 1660	Lassiter	12/16/03	
A Louise Nilsen Mankes v. Mr. Anthony Bordeaux, UNC Gen Admin Dept NCSEAA	03 OSP 1661	Lassiter	12/16/03	
Sheerlene Artis v. Correction Enterprises, Manpower Services	03 OSP 1670	Lassiter	03/11/04	
John N Leak v Dept. of Public Instruction	03 OSP 1711	Lassiter	12/31/03	
Hamid Mozafaripour v Nursing Dept at Dorothea Dix Hospital	03 OSP 1745	Lassiter	02/10/04	
Carolyn A Little v Eastern Area Treatment Program	03 OSP 1810	Lassiter	01/12/04	
Terry T Pigford v Eastern Area Treatment Program	03 OSP 1811	Lassiter	01/12/04	
Sandra J Dills v Smokey Mtn Healthcare Assoc	03 OSP 1962	Chess	01/12/04	
Richard Jones v. NC Department of Revenue	03 OSP 1963	Mann	03/31/04	
William Russell Robinson v School of Science & Math et. Al.	03 OSP 1977	Lassiter	02/16/04	
Elizabeth A Gregory, Correction Officer v Pasquotank Corr Inst #3740	03 OSP 2209	Lassiter	02/23/04	
Patricia Stoddard v Elizabeth City State University	03 OSP 2228	Lassiter	02/18/04	
Christopher Paul Davis v DHHS and Caswell Center	03 OSP 2275	Conner	01/14/03	
Lonnie E. Williams v. NCCU	03 OSP 2301	Mann	03/24/04	
Deborah Ann Bozsan v Henderson Co Board of Public Education	03 OSP 2303	Wade	02/11/04	
Bernie C Thomas v Fayetteville State University	03 OSP 2306	Morrison	03/03/04	
Leonard Gibson v Brown Creek Correctional Institution	03 OSP 2317	Gray	03/08/04	
Andora Taylor Hailey v Roslyn G Powell (Div Chief) Dept of Comm Corr.	03 OSP 2318	Gray	03/05/04	
Miracle L Smith v. State Highway Patrol	04 OSP 0039	Gray	03/10/04	

**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	
Michael Gray Simmons v. UNC Hospitals	03 UNC 0977	Wade	11/25/03	
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03	
Mary P Kearney v. UNC Hospitals	03 UNC 1035	Elkins	02/25/04	
D. Parker Lynch v. UNC Hospitals	03 UNC 1124	Wade	11/19/03	
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03	
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03	
Michael J Cassidy v. UNC Hospitals	03 UNC 2428	Conner	03/10/04	

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- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases

*CONTESTED CASE DECISIONS*

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- 7 Combined Cases
- 8 Combined Cases
- 9 Combined Cases
- 10 Combined Cases
- 11 Combined Cases
- 12 Combined Cases
- 13 Combined Cases



A. Coverage is provided for dental (including surgery and appliances for mouth, jaw and tooth restoration) necessitated by an accidental injury of external and violent means, such as the impact of a moving body, vehicle collision, or fall, occurring while the individual is covered under the Plan.

B. Benefits include extractions, fillings, crowns, bridges or other necessary therapeutic techniques and appliances, and are limited to those *necessary to restore condition and function to that which existed immediately prior to the accident.* (Emphasis added.)

3. N. C. Gen. Stat. § 135-40.6(8)(f) states that other charges covered by the State Health Plan include:

- Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of a body . . . occurring while an individual is covered under G.S. 135-40.3.
- Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances *to reasonably restore condition and function to that existing immediately prior to the accident.* (Emphasis added.)

**FINDINGS OF FACT**

Based upon the careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

1. Petitioner, Harold Batiste, is a retired state employee and member of the State Health Plan and was enrolled with the Plan during the relevant time period.

2. Respondent North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan is the state agency responsible for administering the health care benefits provided for state employees and retired state employees by the North Carolina General Assembly.

3. Blue Cross Blue Shield of North Carolina is the Claims Administrator for the State Health Plan.

4. Petitioner was playing basketball April 7, 2003, when he was accidentally hit in the mouth by another player's elbow.

5. The force was so great that he was bleeding, the game was stopped, and he had to leave the game.

6. The next day, the Petitioner saw his dentist, Jeffrey Cecil, DDS who informed him that teeth 8 and 9 were beyond repair and would have to be extracted, and tooth 7 would require a root canal and bonding.

7. Dr. Cecil further informed Mr. Batiste that he would need a bridge to replace the extracted teeth.

8. Petitioner has a history of trauma to his mouth during basketball games.

9. Petitioner could not recall how many times he had his teeth bonded but he knew it had been ongoing for several years.

10. As an eligible Retiree, Petitioner sought coverage from the Plan for dental services required due to an accidental injury.

11. Petitioner filed a grievance. A letter from the grievance specialist dated July 23, 2003 stated that: "The teeth were being held in place by bonding. Due to pre-existing periodontal disease benefits do not fall under the Plan's accident related dental benefits. However, to ensure appropriate benefit application, as a courtesy to you, we have reviewed the documentation related to this service and determined the benefits have been correctly denied."



## CONTESTED CASE DECISIONS

12. The Benefit Specialist determined that the dental services requested were a Benefit Exclusion. The letter further stated that: "This is not a benefit eligible for appeal or grievance." (emphasis added). He was notified that he should contact State Review with any additional concerns within 60 days.

13. Petitioner sought to have his case heard by the Healthcare Review Program in the North Carolina Department of Insurance. His request for external review was denied because the service requested was not a covered benefit under the policy as determined by the Plan.

14. Petitioner filed a Petition for a Contested Case Hearing.

15. The Respondent Plan, through its counsel, filed a motion to dismiss for lack of jurisdiction based on the fact that the Petitioner had not exhausted the internal grievance procedures.

16. At the hearing on the Motion to Dismiss, Petitioner argued that the July 23, 2003 letter stated that the benefit he was seeking is not "eligible for appeal or grievance." The Department of Insurance also denied external review because the benefit was excluded. The motion to dismiss was denied and the matter was heard in a contested case hearing.

17. Dr. Eugenie Komivies testified for Respondent. She is employed as the full time Medical Director in charge of utilization management with Blue Cross Blue Shield. She opined that replacing the Petitioner's extracted teeth and building a bridge constitute services which would restore the Petitioner's mouth to a condition better than that which existed immediately prior to the accidental injury. She was recognized as an expert in family medicine and utilization management. She has no dental training although she estimated she had reviewed 25 to 100 dental claims.

18. Candace Blackburn-Smith testified for Respondent. She has been a dental analyst for Blue Cross Blue Shield since 1992. She is a 1980 high school graduate, with one year of Community College training where she became a Certified Dental Assistant with honors. Although she has never attended dental school, she worked at the UNC School of Dentistry from 1985 to 1987 as a dental auxiliary utilization assistant, working with undergraduate, graduate and dental students. She also worked at the UNC School of Dentistry as a pedodontic assistant from 1981 through 1983.

19. Ms. Blackburn-Smith investigated Petitioner's claim. Using Petitioner's x-rays, she testified that there was bone loss resulting from gum disease which she believed had been ongoing for a long period of time.

20. Prior to the accident, the Petitioner had teeth # 8 and 9. Due to the accidental injury, teeth # 8 and 9 had to be extracted.

### CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the undersigned Administrative Law Judge concludes as a matter of law that:

1. The burden of proof is on Petitioner to show that the services at issue are within the health insurance coverage provided by Respondent. It is appropriate to allocate the burden of proof to Petitioner given the legal principle that the interpretation of a statute given by the administrative agency charged with carrying it out is entitled to great weight. *See Frye Regional Medical Center, Inc. v. Hunt*, 350 N.C. 39, 510 S.E.2d 159 (1999).

2. The legal standards applicable to this case are found within the governing statutes and policies of the State Health Plan, N.C. Gen. Stat. 135-40.6; and Board of Trustees Policy SU0160-Dental and Oral Surgical Procedures.

3. The services the Petitioner seeks qualify for payment under the General Statutes, State Health Plan and Board policies applicable to this proceeding.

### DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby decided that the State Health Plan shall approve payment for the requested dental services.

### ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

### NOTICE

**CONTESTED CASE DECISIONS**

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The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B036(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 12th day of March, 2004.

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Beryl E. Wade  
Administrative Law Judge