

NORTH CAROLINA

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REGISTER

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June 15, 2006

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For the **CUMULATIVE INDEX** to the NC Register go to:
<http://reports.oah.state.nc.us/cumulativeIndex.pl>

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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.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
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	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
19A	TRANSPORTATION	26 Landscape Architects	
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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	
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		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 2006 – December 2006

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

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.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

ENVIRONMENTAL MANAGEMENT COMMISSION

NOTICE OF EXTENDED COMMENT PERIOD

**Proposed WS-V Reclassification of Neuse River, Richland Creek and associated unnamed tributaries
Rule 15A NCAC 02B .0315 Neuse River Basin**

A Notice of Text was previously published in the 20:13 issue of the NC Register for this proposed reclassification, and it included notice of a public hearing, which was held in February 2006, as well as a comment period, which ended in March 2006. Subsequent to that notice, the Environmental Management Commission (EMC) received a request for additional time to investigate the practicability of withdrawing water to supply the public from the water treatment facility located at the former Burlington Mills Wake Finishing Plant. Based on this request, EMC has directed the Division of Water Quality (DWQ) to reopen the comment period for 60 days in order to provide further opportunity for comments on the proposed reclassification to be submitted to DWQ. Comments received during the January 2006 – March 2006 comment period will remain in the hearing record. According to EMC counsel, because a public hearing has already been held for this proposed reclassification, another public hearing is not required to be held, even if requested.

The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the published text of the proposed rule unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments may be submitted to Elizabeth Kountis of the Water Quality Planning Section of the Division of Water Quality at the postal address, e-mail address, or fax number listed in this notice. The comment period ends August 15, 2006, and this proposed reclassification is scheduled to appear on the agenda of the September 2006 EMC meeting.

**Elizabeth Kountis
DENR/Division of Water Quality, Planning Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Phone (optional) (919)733-5083 extension 369
Fax (optional) (919)715-5637
E-Mail (optional): Elizabeth.kountis@ncmail.net**

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 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to adopt the rules cited as 10A NCAC 26E .0601 - .0604.

Proposed Effective Date: October 1, 2006

Instructions on How to Demand a Public Hearing: A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018 by June 30, 2006.

Reason for Proposed Action: To establish a Controlled Substances Reporting System, as per G.S. 90-113.60. Senate Bill 622 included legislation which instructs the Department of Health and Human Services to establish a reporting system of prescriptions for all Schedule II through V controlled substances. It is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by August 14, 2006.

Comments may be submitted to: Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email cindy.kornegay@ncmail.net

Comment period ends: August 14, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 26 – MENTAL HEALTH: GENERAL

**SUBCHAPTER 26E - MANUFACTURERS:
DISTRIBUTORS: DISPENSERS AND RESEARCHERS
OF CONTROLLED SUBSTANCES**

**SECTION .0600 CONTROLLED SUBSTANCES
REPORTING SYSTEM**

10A NCAC 26E .0601 SCOPE

The rules of this Section as well as the provisions of Chapter 90, Article 5E shall govern requirements for the controlled substances reporting system as set forth in G.S. 90-113.70.

Authority G.S. 90-113.70; 90-113.76.

10A NCAC 26E .0602 DEFINITIONS

(a) As used in this Section, the following terms shall have the meanings as specified:

- (1) "Controlled substance reporting system" means the reporting system as set forth in Article 5E of Chapter 90.
- (2) "ASAP" means the American Society for Automation in Pharmacy.

(b) Any term not defined in this Section shall have the same definitions as set forth in G.S. 90-87 and 90-113.72.

Authority G.S. 90-113.70; 90-113.76.

10A NCAC 26E .0603 REPORTING REQUIREMENTS

(a) All dispensers as defined by G.S. 90-113.72(4) shall submit data to the Department on the dispensing of controlled substances in Schedules II thru V.

(b) A dispenser of a Schedule II, III, IV or V controlled substance shall report the data as set forth in G.S. 90-113.73(b).

Authority G.S. 90-113.70; 90-113.73(b); 90-113.76.

10A NCAC 26E .0604 REQUIREMENTS FOR TRANSMISSION OF DATA

(a) Each dispenser shall transmit to the Department the data as set forth in GS 113.73. The data shall be transmitted in the most recent format as set forth in the ASAP Telecommunication Format for Controlled Substances, published by the American Society for Automation in Pharmacy.

(b) The dispenser shall transmit the data electronically unless the Department approves a request for submission on paper as set forth in Paragraphs (e) and (f) of this Rule.

(c) The dispenser's electronic transfer data equipment including hardware, software and internet connections shall be in compliance with the Health Insurance Portability and Accountability Act as set forth in 45 CFR, Part 164.

(d) Each electronic transmission shall meet data protection requirements as follows:

- (1) Data shall be at least 128B encryption in transmission and at rest; or
- (2) Data shall be transmitted via secure file transfer protocol. Once received, data at rest shall be encrypted.

(e) The data may be submitted on paper, if the dispenser submits a written request to the Department and receives prior approval.

(f) The Department shall consider the following in granting approval of the request:

- (1) The dispenser does not have a computerized record keeping system.
- (2) The dispenser is unable to conform to the submission format required by the database administrator without incurring undue financial hardship.

(g) The dispenser shall report the data on the 30th day of each month for the first 12 months of the system's operation, and on the 15th day and 30th day of each month thereafter. If the 15th or the 30th day does not fall on a business day the dispenser shall report the data on the next following business day.

(h) The Department shall provide reports to the Commission concerning the outcomes of the implementation of the controlled substances reporting system. The reports shall be made to the Commission six and 12 months after the reporting system is implemented.

Authority G.S. 90-113.70; 90-113.73; 90-113.76.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to amend the rule cited as 10A NCAC 27G .3803.

Proposed Effective Date: October 1, 2006

Instructions on How to Demand a Public Hearing: *A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018 by June 30, 2006.*

Reason for Proposed Action: *Session Law 2005-312/House Bill 35 directs the Commission on Mental Health, Developmental Disabilities and Substance Abuse Services to revise its rules regarding the number of instructional program hours and the class size for ADETS schools.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by August 14, 2006.*

Comments may be submitted to: *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email cindy.kornegay@ncmail.net*

Comment period ends: August 14, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .3800 - SUBSTANCE ABUSE SERVICES FOR DWI OFFENDERS

10A NCAC 27G .3803 OPERATIONS

- (a) Curriculum. School instructors shall follow the requirements in G.S. 122C-142.1.
- (b) The program of instruction shall consist of not less than ~~ten~~ 16 hours of classroom instruction.
- (c) Each school may provide up to three additional hours for classroom time and such activities as an initial student

assessment, data gathering or a summary conference with students.

(d) Class Schedule. Each school shall provide a written notice to each student referred by the court as to the time and location of all classes which the student is scheduled to attend.

(e) Each student shall be scheduled to attend the first and the last class sessions in the order prescribed in the curriculum.

(f) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

(g) Each school shall have a written policy which allows for students to be excused from assigned classes by the instructor provided that the excused absence is made up and does not conflict with Subparagraph (b)(1) of this Rule.

(h) No class session shall be scheduled or held for more than three hours excluding breaks on any day or evening.

(i) Class Size. Class size shall be limited to a maximum of 35 20 persons.

(j) Requirements contained in 10A NCAC 27G .3800 SUBSTANCE ABUSE SERVICES FOR DWI OFFENDERS; 10A NCAC 29D .0600 SUBSTANCE ABUSE ASSESSMENTS FOR INDIVIDUALS CHARGED WITH OR CONVICTED OF DRIVING WHILE IMPAIRED (DWI) shall be followed by anyone who provides DWI assessments.

(k) DWI Services Certificates of Completion. The original copy of the North Carolina Department of Human Resources Health and Human Services DWI Services Certificates of Completion shall be forwarded to DMH/DD/SAS for review within two weeks of completion of all services.

Authority G.S. 20-179; 20-179.2; 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 10A NCAC 43H .0111.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: August 9, 2006

Time: 1:00 pm

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: As a result of the enactment of the current rule change which allows one inpatient admission per client per year in January of 2004, program expenditures have remained within budget for FY05. However, sickle cell clients and their providers may not have used inpatient services as frequently as necessary due to the overwhelming concern for cost. Limiting the inpatient stay to one admission per year has resulted in eliminating flexibility for hospitalizations. The proposed rule will provide seven inpatient days per year per client with no restrictions on admissions. This will maximize the use of days for clients and keep the cost within budget.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris

G. Hoke, JD, the Rule-making Coordinator, during the public comment period. Additionally, objections may be made verbally and in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919) 715-5006, email chris.hoke@ncmail.net

Comment period ends: August 14, 2006

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 43 – PERSONAL HEALTH

SUBCHAPTER 43H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH SECTION

SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

10A NCAC 43H .0111 MEDICAL SERVICES COVERED

The following medical services are covered under the N.C. Sickle Cell Syndrome Program if the Program Supervisor determines that these services are related to sickle cell disease:

- (1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits shall not exceed triple the Program average for each for the previous two years;
(2) physicians' office visits;
(3) drugs on a formulary established by the program based upon the following factors: the medical needs of sickle cell patients, the efficacy and cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients utilizing finite program

dollars. A copy of this formulary may be obtained free of charge by writing to the N. C. Sickie Cell Syndrome Program, 1929 Mail Service Center, Raleigh, North Carolina, 27699-1929.

- (4) medical supplies and equipment;
- (5) preventive dentistry including education, examinations, cleaning, and X-rays; remedial dentistry including tooth removal, restoration, and endodontic treatment for pain prevention; and emergency dental care to control bleeding, relieve pain, and treat infection;
- (6) eye care (when the division of services for the blind will not provide coverage); and
- (7) inpatient care. The cost of ~~one~~ inpatient admission care per client per year for a maximum of seven days per fiscal year.

Authority G.S. 130A-129.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to adopt the rules cited as 11 NCAC 10 .1701 - .1702, amend the rules cited as 11 NCAC 10 .0602, .1106 and repeal the rules cited as 11 NCAC 10 .0801 - .0804, .0806, .0901 - .0903, .0906 - .0907.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: July 10, 2006

Time: 10:00 am

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *The repeals and adoption of new Section 1700 are required because of the enactment of S.L. 2005-210, and the amendments are necessary to conform to statute.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on August 14, 2006.*

Comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenke@ncdoi.net*

Comment period ends: August 14, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0600 - CONSENT TO RATE

11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES

(a) An initial (first time) application to effect consent to rate on a specific risk of coverage subject to ~~Article 36 of G.S. 58,~~ Article 36 of Chapter 58 of the North Carolina General Statutes in excess of the rate promulgated by the North Carolina Rate Bureau, shall contain the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the property insured, the deductible, and any other factor used for rating, where applicable;
- (2) the rate and premium that would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed ~~250 percent~~ 200 percent of the rate that would be charged without application of consent to rate. Any proposed rate in excess of ~~250 percent~~ 200 percent must be explained fully and shall be subject to review and approval of the Commissioner pursuant to G.S. 58-36-30(b). (This is not required for and does not apply to nonfleet private passenger motor vehicle physical damage insurance);
- (5) a statement that the rate charged does not exceed the rate that would be applicable if the applicant had been charged ~~550 percent~~ the lesser of 200 percent of the rate that would be charged without application of consent to rate, or 400 percent of the rate with no Safe Driver Incentive Plan points. Any proposed rate in excess of ~~550 percent~~ this amount must be explained fully, submitted individually, and shall be subject to review and approval of the Commissioner pursuant to G.S. 58-36-30(b). (This is required for nonfleet private passenger

motor vehicle physical damage insurance only);

- (6) the names and addresses of the insurer, the writing agent, and the insured;
- (7) the effective date of the proposed rate;
- (8) the policy period;
- (9) the policy number; and
- (10) a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for the specific risk written on consent to rate is available through a residual market (FAIR Plan, Beach Plan, North Carolina Reinsurance Facility, North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be executed.

(b) A letter signed by each insured acknowledging and consenting to the proposed rate shall be retained in the insurer's office and be made available to the Commissioner upon request.

Authority G.S. 58-2-40(1); 58-36-30(b).

SECTION .0800 - LICENSING OF RATING ORGANIZATIONS

11 NCAC 10 .0801 GENERAL INFORMATION

~~Every rating organization, as a prerequisite to conducting its operations in this state, shall obtain either a monoline or multi-line license and make a filing to the commissioner. Applications for new or renewal licenses should be submitted to the Commissioner of Insurance, Attention: Deputy Commissioner, Property and Casualty Division, P.O. Box 26387, Raleigh, North Carolina 27611.~~

Authority G.S. 58-2-40; 58-40-1(2); 58-40-5(5); 58-40-50.

11 NCAC 10 .0802 PROCEDURE FOR APPLICATION FOR NEW LICENSE

~~Rating organizations not previously licensed shall submit the fee set forth in G.S. 58-6-7 and an application, including, but not limited to:~~

- (1) the name and address of the organization;
- (2) a copy of:
 - (a) its constitution, charter, or articles of incorporation, association, or agreement;
 - (b) its bylaws, plan of operation, or other rules governing its business duly certified by the custodian of the original thereof;
 - (c) any other rules or regulations governing the conduct of its business;
- (3) a list of the insurers who are members, subscribers or service purchasers;
- (4) a list of the states where the organization is licensed;
- (5) a list of the lines of insurance involved;

- ~~(6) the names and addresses of all officers and managers;~~
- ~~(7) the name and address of one or more residents of this state appointed to receive notices, process, or orders;~~
- ~~(8) a statement demonstrating its technical qualifications;~~
- ~~(9) a check in payment of the organization license fee;~~
- ~~(10) such other information as the commissioner may require.~~

Authority G.S. 58-2-40; 58-6-7; 58-40-1(2); 58-40-5(5).

11 NCAC 10 .0803 RENEWAL LICENSE FEE FOR RATING ORGANIZATIONS

~~The renewal license fee set forth in G.S. 58-6-7 shall be paid annually to the commissioner before March 1 of each year. The renewal license application shall include, but not be limited to:~~

- ~~(1) the name and address of the organization;~~
- ~~(2) the lines of insurance rates in which the organization engages;~~
- ~~(3) a description of pertinent changes in its services or activities since the previous renewal license was granted.~~

Authority G.S. 58-2-40; 58-6-7; 58-40-1(2); 58-40-50.

11 NCAC 10 .0804 FORM: LICENSE CERTIFICATE

~~The license certificate form is issued over the signature of the commissioner certifying the organization has been licensed and setting forth the lines of insurance.~~

Authority G.S. 58-2-40; 58-2-45; 58-40-50.

11 NCAC 10 .0806 CHANGES IN FILED INFORMATION

~~Any change in or amendment to any document described in Rules .0802 or .0803 of this Section shall be promptly filed with the commissioner.~~

Authority G.S. 58-2-40; 58-40-55; 58-40-60.

SECTION .0900 - LICENSING OF ADVISORY ORGANIZATIONS

11 NCAC 10 .0901 GENERAL INFORMATION

~~Every insurance advisory organization, as a prerequisite to conducting its operations in this state, shall obtain either a monoline or multi-line license and make a filing to the commissioner. Applications for new or renewal licenses should be submitted to the Commissioner of Insurance, Attention: Deputy Commissioner, Property and Casualty Division, P.O. Box 26387, Raleigh, North Carolina 27611.~~

Authority G.S. 58-2-40; 58-40-55.

11 NCAC 10 .0902 PROCEDURE FOR APPLICATION OF NEW LICENSE

Insurance advisory organizations not previously licensed shall submit the fee set forth in G.S. 58-6-7 and an application including, but not limited to:

- (1) the name and address of the organization;
(2) a copy of:
(a) its constitution, charter, or articles of incorporation, association, or agreement;
(b) its bylaws, plan of operation, or other rules governing its business duly certified by the custodian of the original thereof;
(c) any other rules or regulations governing the conduct of its business.
(3) a list of the insurers who are members or subscribers;
(4) a list of the states where the organization is licensed;
(5) a list of the lines of insurance involved;
(6) the names and addresses of all officers and managers;
(7) the name and address of one or more residents of this state appointed to receive notices, process, or orders;
(8) a statement demonstrating its technical qualifications;
(9) a check in payment of the organization license fee;
(10) such other information as the commissioner may require.

Authority G.S. 58-2-40; 58-40-55.

11 NCAC 10 .0903 CHANGES IN FILED INFORMATION

Any change in or amendment to any document described in Rules .0902 or .0907 of this Section shall be promptly filed with the commissioner.

Authority G.S. 58-2-40; 58-40-55.

11 NCAC 10 .0906 FORM: LICENSE CERTIFICATE

The license certificate form is issued over the signature of the commissioner certifying the organization has been licensed.

Authority G.S. 58-2-40; 58-40-55.

11 NCAC 10 .0907 RENEWAL LICENSE FEE FOR LICENSED ORGANIZATIONS

The renewal license fee set forth in G.S. 58-6-7 shall be paid annually to the commissioner before March 1 of each year. The renewal license application shall include, but not be limited to:

- (1) the name and address of the organization;
(2) the lines of insurance in which the organization engages;
(3) a description of pertinent changes in its services or activities since the previous renewal license was granted.

Authority G.S. 58-2-40; 58-40-55.

SECTION .1100 - RATE FILINGS

11 NCAC 10 .1106 DEVIATIONS FROM RATES OF THE NORTH CAROLINA RATE BUREAU

(a) Definitions: Purpose, Scope, and Applicability:

- (1) Rate deviation refers to the entire collection of differences from the Rate Bureau rates and rating plan that a company has implemented or proposes to implement. Deviation and aggregate deviation are used synonymously. A company shall have only one rate deviation from each Rate Bureau filing and rating plan.
(2) Deviation component refers to any individual part of the aggregate deviation. A deviation component may involve a coverage difference, a different territorial relativity, a different class relativity, a different rate for a particular type of insured, etc. Proposed differences in territorial and class relativities (and other similarly related sets of rating factors) shall be treated as one deviation component.
(3)(2) Introduction of a deviation means that a company has no current rate deviation on file for the particular line but is proposing to implement one.
(4)(3) Modification of a deviation means that a company has a current rate deviation on file for the particular line and that the company proposes to add, change, or eliminate one of the components of the deviation.
(5)(4) Withdrawal of a deviation means that a company has a rate deviation on file that it proposes to withdraw in its entirety.

(b) Filing Guidelines:

- (1) All rate deviation filings must be made in triplicate as follows:
(A) The original and one copy shall be sent to the department.
(B) The second copy shall be sent to the North Carolina Rate Bureau.
(2) A rate deviation shall be introduced, modified, or withdrawn on an individual company basis even if the company is part of a group.
(3) All proposed rate deviations shall be expressed in terms of North Carolina Rate Bureau rates, either as percentages or as dollar amounts.
(4) Filing requirements differ by type of deviation action:
(A) To introduce a deviation, see Paragraph (d) of this Rule.
(B) To modify a deviation, see Paragraph (e) of this Rule.
(C) To withdraw a deviation, see Paragraph (f) of this Rule.

(c) Application of Deviations:

- (1) On approval of the introduction, modification, or withdrawal of one or more rate deviations,

- the department shall transmit to the company a letter of approval listing all the components in effect for that line and company.
- (2) All deviation components listed shall be applied to all eligible insureds and deviation components not listed shall not be applied to any insured.
 - (3) Rate deviations remain in effect until modified or withdrawn.
 - (4) Modifications of existing rate deviations are permitted at any time.
 - (5) An unmodified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months.
 - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
 - (6) A modified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months since the date of the last modification.
 - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
- (d) Filings to introduce rate deviations shall contain only the following information:
- (1) A cover letter containing the following:
 - (A) Company name;
 - ~~(B) Company's Federal Employer's Number;~~
 - ~~(C)~~(B) Line of business involved.
 - (2) A completed deviation questionnaire obtained from the Property and Casualty Division.
- (e) Filings to modify rate deviations shall contain only the following information:
- (1) A cover letter containing the following:
 - (A) Company name;
 - ~~(B) Company's Federal Employer's Number;~~
 - ~~(C)~~(B) Line of business involved;
 - ~~(D)~~(C) Department file number.
 - (2) A completed deviation questionnaire obtained from the Property and Casualty Division.
- (f) Filing letters for withdrawals of rate deviations. Filing letters for withdrawal shall contain only the following information:
- (1) A cover letter including the following information:
 - (A) Company name;
 - ~~(B) Company's Federal Employer's Number;~~
 - ~~(C)~~(B) Line of business involved;
 - ~~(D)~~(C) Department file number.
 - (2) A statement that the deviation has been in effect for at least six months.

- (g) Deviation questionnaires shall contain the following information (if applicable):
- (1) Company Name;
 - ~~(2) Company's Federal Employer's Number;~~
 - ~~(3)~~(2) Company's file number;
 - ~~(4)~~(3) Line of insurance;
 - ~~(5)~~(4) Subline/Program title;
 - ~~(6)~~(5) Previous Department file number, if applicable;
 - ~~(7)~~(6) Proposed effective date and rules of implementation;
 - ~~(8)~~(7) Company's N.C. volume of business;
 - ~~(9)~~(8) Company's N.C. market share;
 - ~~(10)~~(9) Company's countrywide volume of business;
 - ~~(11)~~(10) Number of N.C. insureds affected;
 - ~~(12)~~(11) Percentage of N.C. insureds affected;
 - ~~(13)~~(12) Total dollar amount of premiums that will not be collected on an annual basis as a result of this deviation;
 - ~~(14)~~(13) Average dollar difference per exposure from manual rates;
 - ~~(15)~~(14) Maximum deviation;
 - ~~(16)~~(15) If the deviation produces a premium greater than manual for an individual insured, explain;
 - ~~(17)~~(16) List of individual deviation components and the proposed action;
 - ~~(18)~~(17) Certification by a company officer or filings department head; and
 - ~~(19)~~(18) Actuarial certification. certification with justification that the deviation is based on sound actuarial principles.

Authority G.S. 58-2-190; 58-36-30(a) and (c).

SECTION .1700 - LICENSING OF STATISTICAL ORGANIZATIONS

11 NCAC 10 .1701 GENERAL REQUIREMENTS
Licenses issued under G.S. 58-36-4 and G.S. 58-40-50 shall be either monoline or multiline licenses. Applications for licenses shall be submitted to the North Carolina Department of Insurance, Attention: Deputy Commissioner, Property and Casualty Division, 1201 Mail Service Center, Raleigh, N.C. 27699-1201.

Authority G.S. 58-2-40; 58-36-4; 58-40-50.

11 NCAC 10 .1702 PROCEDURE FOR APPLICATION OF NEW LICENSE
In addition to the information required under G.S. 58-36-4 and G.S. 58-40-50, the following information shall accompany all license applications:

- (1) The name and address of the statistical organization;
- (2) A list of the insurers who are service purchasers;
- (3) A list of the states where the organization is licensed;
- (4) A list of the lines of insurance involved; and

- (5) The names and addresses of all officers and managers.

Authority G.S. 58-2-40; 58-36-4; 58-40-50.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .1006, and amend the rules cited as 15A NCAC 02D .0524, .0605, .0927, .0932, .1111; 02Q .0306, .0503, .0508, .0514.

Proposed Effective Date: November 1, 2006

Public Hearing:

Date: July 12, 2006

Time: 7:00 pm

Location: Air Quality Training Room, 2728 Capital Blvd., Raleigh, NC 27604

Reason for Proposed Action:

15A NCAC 02D .0605 To prohibit knowingly submitting false information.

15A NCAC 02D .0927 To add details on monitoring, recordkeeping, and repair requirements.

15A NCAC 02D .0932 To reorganize rule and clarify leak repair requirements.

15A NCAC 02D .1006 To require vendors of automobile on-board diagnostic testing equipment to repair the equipment and accompanying software in a timely manner.

15A NCAC 02D .0524, .1111 To delegate the implementation of the new source performance standard and maximum achievable control technology standard for drycleaners to the Division of Waste Management.

15A NCAC 02Q .0306 To require noticing for public comment draft permits with conditions exempting a source from the 20-percent opacity standard or conditions allowing a source to use an alternative monitoring procedure or methodology.

15A NCAC 02Q .0503 To change the definition of "insignificant activities because of category" for heating units used solely for comfort heat.

15A NCAC 02Q .0508 To change requirement of submitting a report of deviations from the next business day to submitting quarterly.

15A NCAC 02Q .0514 To clarify the administrative amendment process for the state-enforceable only part of a Title V permit.

Procedure by which a person can object to the agency on a proposed rule: Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until August 14, 2006, to receive additional written comments. To be included in the hearing record, the statement must be received by the

Department by August 14, 2006. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained contacting Mr. Thomas C. Allen.

Comments may be submitted to: Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919) 715-7476, email thom.allen@ncmail.net

Comment period ends: August 14, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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: A copy of the fiscal note can be obtained from the agency.

- State** 15A NCAC 02Q .0503
- Local**
- Substantive** (\geq \$3,000,000)
- None** 15A NCAC 02D .0524, .0605, .0927, .0932, .1006, .1111; 02Q .0306, .0508, .0514

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0524 NEW SOURCE PERFORMANCE STANDARDS

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith.

(b) The following is not included under this Rule:

- (1) 40 CFR Part 60, Subpart AAA (new residential wood heaters);
- (2) 40 CFR Part 60, Subpart B (adoption and submittal of state plans for designated facilities);

- (3) 40 CFR Part 60, Subpart C (emission guidelines and compliance times);
- (4) 40 CFR Part 60, Subpart Ca (guidelines for municipal waste combustors);
- (5) 40 CFR Part 60, Subpart Cb (guidelines for municipal waste combustors constructed on or before December 19, 1995);
- (6) 40 CFR Part 60, Subpart Cc (guidelines for municipal solid waste landfills); or
- (7) 40 CFR Part 60, Subpart Cd (guidelines for sulfuric acid production units).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency. ~~Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 60, Subpart JJJ for dry cleaners covered under Chapter 143, Article 21A, Part 6 of the General Statutes shall be submitted to the Director of the Division of Waste Management.~~

(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter.

(g) With the exceptions allowed under 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, the owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

SECTION .0600 - MONITORING; RECORDKEEPING; REPORTING

15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS

(a) The owner or operator of a source subject to a requirement of this Subchapter or Subchapter 02Q of this Chapter shall maintain:

- (1) records detailing all malfunctions under Rule .0535 of this Subchapter,

- (2) records of all testing conducted under rules in this Subchapter,
- (3) records of all monitoring conducted under rules in this Subchapter or Subchapter 02Q of this Chapter,
- (4) records detailing activities relating to any compliance schedule in this Subchapter, and
- (5) for unpermitted sources, records necessary to determine compliance with rules in this Subchapter or Subchapter 02Q of this Chapter.

(b) The Director shall specify in the source's permit:

- (1) the type of monitoring required and the frequency of the monitoring,
- (2) the type of records to be maintained, and
- (3) the type of reports to be submitted and the frequency of submitting these reports, as necessary to determine compliance with rules in this Subchapter or Subchapter 02Q of this Chapter or with an emission standard or permit condition.

(c) If the Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source subject to the requirements of this Subchapter or Subchapter 02Q of this Chapter submit to the Director any information necessary to determine the compliance status of the source.

(d) The owner or operator of a source of excess emissions which last for more than four hours and which results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions shall report excess emissions in accordance with the requirements of Rule .0535 of this Subchapter.

(e) Copies of all records and reports generated in response to the requirements of this Section shall be retained by the owner or operator for a period of two years after the date on which the record was made or the report submitted, except that the Director may extend the retention period in particular instances when necessary to comply with other State or federal requirements or when compliance with a particular standard requires documentation for more than two years.

(f) All records and reports generated in response to the requirements of this Section shall be made available to personnel of the Division for inspection.

(g) The owner or operator of a source subject to the requirements of this Section shall comply with the requirements of this Section at his own cost.

(h) No person shall falsify any information required by a rule in this Subchapter or a permit issued under 15A NCAC 02Q. No person shall knowingly submit any falsified information required by a rule in this Subchapter or a permit issued under 15A NCAC 02Q.

Authority G.S. 143-215.3(a)(1); 143-215-65; 143-215.66; 143-215.1078(a)(4).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

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

- (1) "Bulk gasoline terminal" means:
 - (A) breakout tanks of an interstate oil pipeline facility; or
 - (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
 - (2) "Breakout tank" means a tank used to:
 - (A) relieve surges in a hazardous liquid pipeline system, or
 - (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
 - (3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
 - (4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.
 - (5) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit for the purpose of cleaning, inspection, or repair.
 - (6) "Leak" means a crack or hole that lets petroleum product vapor or liquid escape that can be identified through the use of sight, sound, smell, an explosimeter, or the use of a meter that measures volatile organic compounds.
 - ~~(6)~~(7) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psia. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psia.
 - ~~(7)~~(8) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psia.
- (b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.
- (c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:
- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
 - (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
 - (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
 - (4) All loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.
- (d) Sources regulated by Paragraph (b) of this Rule shall not:
- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
 - (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.
- (e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.
- (f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.
- (g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:
- (1) rim-mounted secondary seals on all external and internal floating roof tanks,
 - (2) gaskets on deck fittings, and
 - (3) floats in the slotted guide poles with a gasket around the cover of the poles.
- (h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:
- (1) deck seams shall be welded, bolted or riveted; and
 - (2) seams on bolted contact decks and on riveted contact decks shall be gasketed.
- (i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:
- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and
 - (2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

then, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Bulk gasoline storage tanks containing not more than 138 gallons of liquid gasoline or the equivalent of gasoline vapor and gasoline liquid are exempted from the degassing requirements if gasoline vapors are vented for at least 24-hours. Documentation of degassing external or internal floating roof tanks shall be made according to 15A NCAC 02D .0903.

(n) According to Rule .0903 of this Section, the owner or operator of a bulk gasoline terminal shall visually inspect the following for leaks each day that the terminal is both manned and open for business:

- (1) the vapor collection system,
- (2) the vapor control system, and
- (3) each lane of the loading rack while a gasoline tank truck or trailer is being loaded.

If no leaks are found, the owner or operator shall record that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(o) The owner or operator of a bulk gasoline terminal shall inspect weekly for leaks:

- (1) the vapor collection system,
- (2) the vapor control system, and
- (3) each lane of the loading rack while a gasoline tank truck or trailer is being loaded.

The weekly inspection shall be done using sight, sound, or smell; a meter used to measure volatile organic compounds; or an explosimeter. An inspection using either a meter used to measure volatile organic compounds or an explosimeter shall be conducted every month. If no leaks are found, the owner or operator shall record the date that the inspection was done and that no leaks were found. If a leak is found, the owner or

operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(p) For each leak found under Paragraph (n) or (o) of this Rule, the owner or operator of a bulk gasoline terminal shall record:

- (1) the date of the inspection,
- (2) the findings (location, nature and severity of each leak),
- (3) the corrective action taken,
- (4) the date when corrective action was completed, and
- (5) any other important information that the terminal deems necessary to demonstrate compliance.

(q) The owner or operator of a bulk gasoline terminal shall repair all leaks as follows:

- (1) The vapor collection hose that connects to the tank truck or trailer shall be repaired or replaced before another tank truck or trailer is loaded at that rack after a leak has been detected originating with the terminal's equipment rather than from the gasoline tank truck or trailer.
- (2) All other leaks shall be repaired as expeditiously as possible but no later than 15 days from their detection. If more than 15 days are required to make the repair, the reasons that the repair cannot be made shall be documented, and the leaking equipment shall not be used after the fifteenth day from when the leak detection was found until the repair is made.

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

15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS

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

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means:
 - (A) ~~breakout tanks of an interstate oil pipeline facility; or~~
 - (B) ~~a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.~~

"Bulk gasoline plant" means a gasoline storage and distribution facility which has an average daily throughput of less than 20,000 gallons of gasoline and which usually receives gasoline from bulk terminals by trailer transport, stores

- it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.
- (3) ~~"Bulk gasoline terminal" means a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.~~
"Bulk gasoline terminal" means:
 (A) breakout tanks of an interstate oil pipeline facility; or
 (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (4) "Certified facility" means any facility that has been certified under Rule .0960 of this Section to perform leak tightness tests on truck tanks.
- (5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- ~~(6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.~~
- ~~(7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.~~
- ~~(8)(6)~~ "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- ~~(9)(7)~~ "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- ~~(10)(8)~~ "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- ~~(11)(9)~~ "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.
- (b) This Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, ~~gasoline dispensing facilities, and gasoline service stations~~ equipped with vapor balance or vapor control systems.
- (c) Gasoline Truck Tanks.
- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually by a certified facility. The test procedure that shall be used is described in Rules .0940 and .0941 of this Section, and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than ~~3.01.0~~ inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker ~~near the Department of Transportation certification plate required by 49 CFR 178.340-10b,~~ on the front tank shell.
- (3) There shall be no liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.
- ~~(5) The owner or operator of a gasoline truck tanks with a vapor collection system shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:~~
 (A) the gasoline truck tank identification number;
 (B) the initial test pressure and the time of the reading;
 (C) the final test pressure and the time of the reading;
 (D) the initial test vacuum and the time of reading;
 (E) the final test vacuum and the time of the reading;
 (F) the date and location of the tests;
 (G) the NC sticker number issued; and
 (H) the final change in pressure of the internal vapor value test.
- ~~(6) A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy~~

of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

(d) Bulk Gasoline Terminals, Bulk Gasoline Plants Equipped With Vapor Balance or Vapor Collection—Control Systems.~~System~~

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
 - (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section; and
 - (B) no liquid leaks.
- (3) If a leak is discovered that exceeds the limit in ~~Subparagraph (2) Part (2)(A)~~ Paragraph ~~Paragraph~~ Paragraph:
 - (A) ~~For bulk gasoline plants,~~ the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with ~~Subparagraph (2) Part (2)(A)~~ Paragraph ~~Paragraph~~ Paragraph.
 - (B) ~~For bulk gasoline terminals,~~ the vapor collection system or vapor control system shall be repaired following the procedures in Rule .0927 of this Section.
- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to Rule .0912 and .0940 of this Section, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the Director may allow less frequent monitoring. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.
- (5) ~~The owner or operator of a vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with~~

vapor balance or vapor control systems shall maintain records of all certification testing and repairs. The records shall identify the vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest.

~~(e) The owner or operator of a source subject to this Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:~~

- ~~(1) the gasoline truck tank identification number;~~
- ~~(2) the initial test pressure and the time of the reading;~~
- ~~(3) the final test pressure and the time of the reading;~~
- ~~(4) the initial test vacuum and the time of reading;~~
- ~~(5) the final test vacuum and the time of the reading, and~~
- ~~(6) the date and location of the tests.~~

~~A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.~~

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

SECTION .1000 - MOTOR VEHICLE EMISSION CONTROL STANDARD

15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS

(a) Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to inspection stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule .1004 of this Section or that is used to perform on-board diagnostic tests to show compliance with Rule .1005 of this Section.

(b) Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231 On-board Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the inspection/maintenance program requirements of this Section.

(c) Hardware repair. When equipment hardware fails to meet the requirements of Paragraph (b) of this Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the impacted station within 24 hours and:

- (1) Where the hardware problem is stopping 20 percent or more inspections or is compromising the security of the inspection system, the vendor shall repair the problem within 48 hours after the initial call to its respective service call center.

(2) Where the hardware problem is stopping less than 20 percent of all inspections and is not compromising the security of the inspection system, the vendor shall repair the problem within 72 hours after the initial call to its respective service call center.

(3) Where the hardware problem is not stopping inspections and is not compromising the security of the inspection system, the vendor shall repair the problem within 96 hours after the initial call to its respective service call center.

(d) Software repair. When analyzer software fails to meet the requirements of Paragraph (b) of this Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the station within 24 hours. The vendor shall identify and characterize the software problem within five days. The vendor shall, within that same 5-day period, inform the station owner and the Division as to the nature of the problem and the proposed corrective course of action and:

(1) Where the software problem is stopping 20 percent or more inspections or is compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 19 days after receiving the initial call to its service call center.

(2) Where the software problem is stopping less than 20 percent of all inspections and is not compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 33 days after receiving the initial call to its service call center.

(3) The vendor shall distribute the new revision of the software to all impacted stations within 14 days after the vendor receives written notification from the Division that the software has been approved as meeting the requirements of Paragraph (b) of this Rule.

(e) Documentation of the initial service call. The vendor's service call center will assign a unique service response number to every reported new hardware or software problem. The time and date of the initial call shall be recorded and identified with the service response number. The service response number shall be communicated to the inspection station operator at the time of the initial contact.

Authority G.S. 143-215.3(a)(1); 143-215,107(a)(6), (14).

15A NCAC 02D .1111 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to national emission standards for hazardous air pollutants for source categories promulgated in 40 CFR Part 63 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as

required therein, rather than with any otherwise-applicable rule in Section .0500 of this Subchapter which would be in conflict therewith.

(b) The following are not included under this Rule:

(1) approval of state programs and delegation of federal authorities (40 CFR 63.90 to 63.96, Subpart E); and

(2) requirements for control technology determined for major sources in accordance with Clean Air Act Sections 112(g) and 112(j) (40 CFR 63.50 to 63.57, Subpart B).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standard for hazardous air pollutants for source categories promulgated under 40 CFR Part 63, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 63 that are not excluded by this Rule as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency. ~~Agency;~~ except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 63, Subpart M for dry cleaners covered under Chapter 143, Article 21A, Part 6 of the General Statutes shall be submitted to the Director of the Division of Waste Management.

(f) In the application of this Rule, definitions contained in 40 CFR Part 63 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies if the source is required to be permitted under 15A NCAC 02Q .0500, Title V Procedures. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500. Sources that have heretofore been exempted from needing a permit and become subject to requirements promulgated under 40 CFR 63 shall apply for a permit in accordance to 15A NCAC 02Q .0109.

Authority G.S. 143-215.3(a)(1); 143-215.107 (a)(5); 150B-21.6.

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity for the public to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on public interest relevant to air quality;
- (2) a source to which 15A NCAC 02D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 02D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in 15A NCAC 02D .0500 according to 15A NCAC 02D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 02D .0400;
- (5) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 according to 15A NCAC 02D .0952;
- (6) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system according to 15A NCAC 02D .0936;
- (7) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 02D .1204(c)(2)(B) and .1208 (b)(2)(B);
- (8) an alternative mix of controls under 15A NCAC 02D .0501(f);
- (9) a source that is subject to the requirements of 15A NCAC 02D .1109 or .1112; ~~or~~
- (10) a source seeking exemption from the 20-percent opacity standard in 15A NCAC 02D .0521 under 15A NCAC 02D .0521(f);
- (11) a source using an alternative monitoring procedure or methodology under 15A NCAC 02D .0606(g) or .0608(g); or
- ~~(12)~~ the owner or operator requests that the draft permit go to public notice with an opportunity to request a public hearing.

(b) On the Division's website, the Director shall post a copy of the draft permit that changes classification for a facility by placing a physical or operational limitation in it to avoid the applicability of rules in 15A NCAC 02Q .0500. Along with the draft permit, the Director shall also post a public notice for comments with an opportunity to request a public hearing on that draft permit. The public notice shall contain the information specified in 15A NCAC 02Q .0307(c) and shall allow at least 30 days for public comment.

(c) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the

SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C.

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
 - (a) contiguous to North Carolina and located less than $D=Q/12.5$ from the facility, where:
 - (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
 - (ii) D = distance from the facility to the contiguous state or local air pollution control agency in miles unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 2D .0532(c)(5); or
 - (b) within 50 miles of the permitted facility.
- (2) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable requirements.
- (3) "Draft permit" means the version of a permit that the Division offers public participation under Rule .0521 of this Section or affected State review under Rule .0522 of this Section.
- (4) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.
- (5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section if the permittee does not file a petition under Article 3 of G.S. 150B.

- (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (7) "Insignificant activities because of category" means:
- (a) mobile sources;
 - (b) air-conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (e) noncommercial food preparation;
 - (f) consumer use of office equipment and products;
 - (g) janitorial services and consumer use of janitorial products;
 - (h) internal combustion engines used for landscaping purposes;
 - (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
 - (j) demolition and renovation activities covered solely under 40 CFR Part 61, Subpart M.
- (8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.
- (9) "Minor facility" means any facility that is not a major facility.
- (10) "Operation" means the utilization of equipment that emits regulated pollutants.
- (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (12) "Permit revision" means any permit modification under Rule .0515, .0516, or .0517 of this Section or any administrative permit amendment under Rule .0514 of this Section.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule .0522 of this Section.
- (14) "Relevant source" means only those sources that are subject to applicable requirements.
- (15) "Responsible official" means a responsible official as defined under 40 CFR 70.2.
- (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (17) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (18) "Timely" means:
- (a) for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal of an application for the respective Standard Industrial Classification;
 - (b) for a new facility, one year after commencing operation;
 - (c) for renewal of a permit previously issued under this Section, nine months before the expiration of that permit;
 - (d) for a minor modification under Rule .0515 of this Section, before commencing the modification;
 - (e) for a significant modification under Rule .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
 - (f) for reopening for cause under Rule .0517 of this Section, as specified by the Director in the request for additional information by the Director;
 - (g) for requests for additional information, as specified by the

- (h) Director in the request for additional information by the Director; or for modifications made under Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

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

15A NCAC 02Q .0508 PERMIT CONTENT

- (a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.
- (b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.
- (c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.
- (d) The permit for sources using an alternative emission limit established under 15A NCAC 02D .0501(f) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.
- (f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:
 - (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
 - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,
 - (B) in a manner as specified by a permit condition, or
 - (C) on other forms that contain the information required on official forms provided by the Division or as specified by a permit condition; and
 - (2) the permittee to ~~report~~ report:
 - (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or

~~.1111; .1111 and to report by the next business day~~

- (B) deviations quarterly from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. ~~The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 02D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken.~~

- (3) ~~All the responsible official to certify all deviations from permit requirements. requirements shall be certified by a responsible official.~~

(g) At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records if computerized records contain the same information as the paper records would contain.

(h) The permit for facilities covered under 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
 - (A) a compliance schedule for meeting the requirements of 15A NCAC 2D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
 - (B) as part of the compliance certification under Paragraph ~~(m)~~(t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

- (i) The permit shall:
 - (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV; but shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;
 - (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
 - (3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and

- reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
 - (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section;
 - (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
 - (7) specify the conditions under which the permit shall be reopened before the expiration of the permit;
 - (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
 - (9) state that the permittee shall furnish to the Division, in a timely manner;
 - (A) any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
 - (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)
 - (10) contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter;
 - (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section;
 - (12) include all applicable requirements for all sources covered under the permit;
 - (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
 - (14) contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter;
 - (15) include all sources including insignificant activities; and
 - (16) may contain such other provisions as the Director considers appropriate.
- (i) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:
- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
 - (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
 - (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.
- (j) The permit shall identify which terms and conditions are enforceable by:
- (1) both EPA and the Division;
 - (2) the Division only;
 - (3) EPA only; and
 - (4) citizens under the federal Clean Air Act.
- (k) The permit shall state that the permittee shall allow personnel of the Division to:
- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
 - (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.
- (l) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:
- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
 - (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.
- (m) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA under Title V of the federal Clean Air Act, including emissions limitations, standards, or work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
- (3) a requirement that the compliance certification include:
 - (A) the identification of each term or condition of the permit that is the basis of the certification;
 - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
 - (C) whether compliance was continuous or intermittent;
 - (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include, at a minimum, the methods and means required under 40 CFR Part 70.6(a)(3); and
 - (E) such other facts as the Director may require to determine the compliance status of the source;
- (4) that all compliance certifications be submitted to EPA as well as to the Division.

- (5) violated by the change in test dates or construction dates;
- (5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit provided that terms and conditions being moved have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;
- (6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;
- (7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment; or
- (8) changes the State-enforceable only portion of the permit.
- (b) In making administrative permit amendments, the Director:
 - (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request,
 - (2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and
 - (3) shall submit a copy of the revised permit to EPA.
- (c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
- (d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow coverage by the permit shield under Rule .0512 of this Section for the administrative permit amendments made.
- (e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.
- (f) This Rule shall not be used to make changes to the state-enforceable only part of a Title V permit. For the state-enforceable only part of a Title V permit, Rule .0316 of this Subchapter shall be used for administrative permit amendments.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

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

15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS

- (a) An "administrative permit amendment" means a permit revision that:
 - (1) corrects typographical errors;
 - (2) identifies a change in the name, address or telephone number of any individual identified in the permit, or provides a similar minor administrative change at the facility;
 - (3) requires more frequent monitoring or reporting by the permittee;
 - (4) changes test dates or construction dates provided that no applicable requirements are

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 – DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend the rule cited as 21 NCAC 16M .0102.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: July 7, 2006

Time: 3:00 pm

Location: Crowne Plaza, One Holiday Inn Drive, Asheville, NC 28806

Reason for Proposed Action: *The purpose of this rule change is to increase the fee for the Board conducted dental hygiene licensure examination to cover the increased costs in administering the examination.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections regarding the proposed rule changes to Bobby White, North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513.*

Comments may be submitted to: *Bobby White, NC Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513*

Comment period ends: *August 14, 2006*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

SUBCHAPTER 16M - FEES PAYABLE

SECTION .0100 – FEES PAYABLE

21 NCAC 16M .0102 DENTAL HYGIENISTS

(a) The following fees shall be payable to the Board:

- (1) Application for examination conducted by the Board
\$ ~~170.00~~ \$275.00
- (2) Renewal of dental hygiene license
\$ 81.00
- (3) Reinstatement of license
\$ 60.00
- (4) Application for provisional licensure
\$ 60.00
- (5) Certificate to a resident dental hygienist desiring to change to another state or territory
\$ 25.00
- (6) Application for license by credentials
\$ 750.00
- (7) License application processing fee
\$ 75.00

(b) Each dental hygienist renewing a license to practice dental hygiene in North Carolina shall be assessed a fee of twenty-five dollars (\$25.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-232; 150B-19(5).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: Commission for Health Services

Rule Citation: 10A NCAC 41A .0101

Effective Date: June 1, 2006

Date Approved by the Rules Review Commission:

May 18, 2006

Reason for Action: The next worldwide influenza pandemic is overdue and proactive measures are necessary in order to prepare for such a pandemic. Consequently, this rule change is necessary in order to ensure that the Division of Public Health is informed promptly of cases of novel influenza virus in the state. This is important if timely containment measures are to be enforced to prevent further transmission, illness, and death. The danger of a worldwide pandemic makes it essential to have this measure in effect as soon as possible. A permanent version of this same rule is also in process.

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0100 – REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

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

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease - 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;

- (13) diphtheria -24 hours;
- (14) Escherichia coli, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis - 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
- (18) gonorrhea - 24 hours;
- (19) granuloma inguinale - 24 hours;
- (20) Haemophilus influenzae, invasive disease - 24 hours;
- (21) Hantavirus infection - 7 days;
- (22) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- (23) Hemorrhagic fever virus infection - 24 hours;
- (24) hepatitis A - 24 hours;
- (25) hepatitis B - 24 hours;
- (26) hepatitis B carriage - 7 days;
- (27) hepatitis C, acute - 7 days;
- (28) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- (29) influenza virus infection causing death in persons less than 18 years of age - 24 hours;
- (30) legionellosis - 7 days;
- (31) leprosy - 7 days;
- (32) leptospirosis - 7 days;
- (33) listeriosis - 24 hours;
- (34) Lyme disease - 7 days;
- (35) lymphogranuloma venereum - 7 days;
- (36) malaria - 7 days;
- (37) measles (rubeola) - 24 hours;
- (38) meningitis, pneumococcal - 7 days;
- (39) meningococcal disease - 24 hours;
- (40) monkeypox - 24 hours;
- (41) mumps - 7 days;
- (42) nongonococcal urethritis - 7 days;
- (43) novel influenza virus infection - immediately;
- ~~(43)~~(44) plague - 24 hours;
- ~~(44)~~(45) paralytic poliomyelitis - 24 hours;
- ~~(45)~~(46) psittacosis - 7 days;
- ~~(46)~~(47) Q fever - 7 days;
- ~~(47)~~(48) rabies, human - 24 hours;
- ~~(48)~~(49) Rocky Mountain spotted fever - 7 days;
- ~~(49)~~(50) rubella - 24 hours;
- ~~(50)~~(51) rubella congenital syndrome - 7 days;
- ~~(51)~~(52) salmonellosis - 24 hours;
- ~~(52)~~(53) severe acute respiratory syndrome (SARS) - 24 hours;
- ~~(53)~~(54) shigellosis - 24 hours;
- ~~(54)~~(55) smallpox - 24 hours;

- ~~(55)~~(56) *Staphylococcus aureus* with reduced susceptibility to vancomycin - 24 hours;
- ~~(56)~~(57) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(57)~~(58) syphilis - 24 hours;
- ~~(58)~~(59) tetanus - 7 days;
- ~~(59)~~(60) toxic shock syndrome - 7 days;
- ~~(60)~~(61) toxoplasmosis, congenital - 7 days;
- ~~(61)~~(62) trichinosis - 7 days;
- ~~(62)~~(63) tuberculosis - 24 hours;
- ~~(63)~~(64) tularemia - 24 hours;
- ~~(64)~~(65) typhoid - 24 hours;
- ~~(65)~~(66) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(66)~~(67) typhus, epidemic (louse-borne) - 7 days;
- ~~(67)~~(68) vaccinia - 24 hours;
- ~~(68)~~(69) vibrio infection (other than cholera) - 24 hours;
- ~~(69)~~(70) whooping cough - 24 hours;
- ~~(70)~~(71) yellow fever - 7 days.

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

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

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) *Bacillus anthracis*, the cause of anthrax.
 - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - (F) *Brucella* spp., the causes of brucellosis.
 - (G) *Campylobacter* spp., the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) *Clostridium botulinum*, a cause of botulism.
 - (J) *Clostridium tetani*, the cause of tetanus.

- (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- (L) *Coxiella burnetii*, the cause of Q fever.
- (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
- (O) *Ehrlichia* spp., the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella* spp., the causes of legionellosis.
- (U) *Leptospira* spp., the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) Monkeypox.
- (X) *Mycobacterium leprae*, the cause of leprosy.
- (Y) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (Z) Poliovirus (any), the cause of poliomyelitis.
- (AA) Rabies virus.
- (BB) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (CC) Rubella virus.
- (DD) *Salmonella* spp., the causes of salmonellosis.
- (EE) *Shigella* spp., the causes of shigellosis.
- (FF) Smallpox virus, the cause of smallpox.
- (GG) *Staphylococcus aureus* with reduced susceptibility to vanomycin.
- (HH) *Trichinella spiralis*, the cause of trichinosis.
- (II) Vaccinia virus.
- (JJ) *Vibrio* spp., the causes of cholera and other vibrioses.
- (KK) Yellow fever virus.
- (LL) *Yersinia pestis*, the cause of plague.

- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:

- (A) Group A Streptococcus pyogenes (group A streptococci).
 - (B) Haemophilus influenzae, serotype b.
 - (C) Neisseria meningitidis, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) Chlamydia psittaci, the cause of psittacosis.
 - (iv) Coxiella burnetii, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) Ehrlichia spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) Chlamydia psittaci
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes that have a level below that specified by the Centers for Disease Control and Prevention as the criteria used to define an AIDS diagnosis.

Rule-making Agency: *Commission for Health Services*

Rule Citation: *10A NCAC 43D .0202, .0706*

Effective Date: *July 1, 2006*

Date Approved by the Rules Review Commission: *May 18, 2006*

Reason for Action: *The Food and Nutrition Services (FNS) of the US Department of Agriculture recently published an interim rule dealing with WIC vendor cost containment. The intent of the rule is to maximize the number of eligible women, children and infants served with available federal funding through specific cost containment measures. The rule requires WIC State agencies to pay vendors for which more than 50% of their food sales came from WIC sales (predominantly WIC vendors) no more for a food instrument than is paid to regular vendors. The North Carolina WIC Program is taking three steps to comply with this requirement. The prices of supplemental food submitted by predominantly WIC vendors will be excluded in calculating Maximum Allowable Prices (MAPS). These vendors will be placed in Peer Group 4 and paid no more than the statewide average for any food instrument.*

CHAPTER 43 – PERSONAL HEALTH

SUBCHAPTER 43D - WIC/NUTRITION

SECTION .0200 - WIC PROGRAM GENERAL INFORMATION

10A NCAC 43D .0202 DEFINITIONS

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001; Amended Eff. April 1, 2003; Temporary Amendment Eff. November 1, 2003; May 16, 2003; Amended Eff. January 1, 2005; April 1, 2004; Temporary Amendment Eff. June 1, 2006.

- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to making a formal appeal in accordance with G.S. 150B.
- (6) A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (9) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
- (11) A "predominantly WIC vendor" is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food instruments.
- ~~(11)~~(12) "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.
- ~~(12)~~(13) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- ~~(13)~~(14) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- ~~(14)~~(15) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- ~~(15)~~(16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.

- ~~(16)~~(17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- ~~(17)~~(18) "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
- ~~(18)~~(19) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- ~~(19)~~(20) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- ~~(20)~~(21) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- ~~(21)~~(22) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- ~~(22)~~(23) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1330 St. Mary's Street, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004; Temporary Amendment Eff. July 1, 2006.

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores,

stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

- Peer Group I - - zero to two cash registers;
- Peer Group II - - three to five cash registers; and
- Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in the peer group designation in accordance with the dollar thresholds of Subparagraph (a)(2) of this Rule.

- (2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.
 - Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;
 - Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;
 - Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and
 - Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;
- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries,

predominantly WIC vendors, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under ~~one agreement~~ agreement), ~~and military commissaries;~~ commissaries, ~~and~~ predominantly WIC vendors; and

Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (5) If a vendor applicant has at least 30% ownership in the applying store and at least 30% ownership in a store(s) already authorized, the applying store shall be placed in the peer group of the highest designation of the already authorized stores(s). Upon reauthorization of the WIC Vendor Agreement, all stores held under common ownership shall be placed in the highest peer group among those held commonly. Common ownership is ownership of 30% or more in two or more stores.
- (6) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.
- (7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.
- (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the

nonrenewal or termination of its Agreement or disqualification from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination or disqualification. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.

(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;
- (2) At the time of application and throughout the term of authorization, submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;
- (3) Authorized vendors shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
 - (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
 - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture;
 - (C) Retail food stores that purchase directly from infant formula manufacturers in accordance with Part (b)(3)(A) of this Rule or an approved wholesaler in accordance with Part (b)(3)(B) of this Rule; or
 - (D) A supplier on another state's list of approved infant formula suppliers as verified by this state agency.

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts

documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical food directly from the above listed sources. Acceptable receipts include company letterhead or name of wholesaler/manufacturer, date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases;

(4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule:

(A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each ~~year;~~ year. The sample of vendors shall exclude predominantly WIC vendors;

(B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant

shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization;

- (5) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
- (6) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
- (7) Mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times;
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.;
- (10) The store shall not use either the acronym "WIC" or the WIC logo, including close facsimiles, in total or part, either in the official name in which the business is registered or in the name under which it does business, if different;
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency;
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is

employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business;

- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;
- (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of

Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or

conveyance of financial interest in a Food Stamp vendor under Part (b)(15)(A) of this Subparagraph prematurely ends

the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply

until the time the Food Stamp vendor disqualification otherwise would have expired;

- (16) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and

- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

(c) By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
- (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;

- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;

- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors shall not exceed the statewide average for any food instrument. This average excludes data from predominantly WIC vendors.

- (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;

- (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;

- (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;

- (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;

- (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;

- (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;

- (13) Ensure that the food instrument is countersigned in the presence of the cashier;

- (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;

- (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;

TEMPORARY RULES

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| <p>(16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;</p> <p>(17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;</p> <p>(18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;</p> <p>(19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;</p> | <p>(20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;</p> <p>(21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;</p> <p>(22) Notify the local WIC agency of misuse (attempted or actual) of the WIC program food instrument(s);</p> <p>(23) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:</p> |
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Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	Total of 6 gallons fluid milk
	-and-	
	Skim/lowfat fluid: gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 oz. can	5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices	Frozen: 11.5-12 oz. container	10 containers
	Single strength: 46 oz. container	10 containers
	Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	
Dried Peas and Beans	2 varieties: one pound package	3 packages
or		

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Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container	3 containers
Infant Cereal	Plain-no fruit added: 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk-based concentrate; 13 oz.	31 cans
	-and- soy-based concentrate; 13 oz.	15 cans
	-and- milk-based powder; 12 – 14.3 oz.	9 cans
	-and- soy-based powder; 12 – 14.3 oz. Brand specified in Vendor Agreement	4 cans
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen 14.5-16 oz. size	2 packages/cans

- All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk or soy-based infant formula in 32 oz. ready-to-feed or lactose-free infant formula in 32 oz. ready-to-feed or powder within 48 hours of request by the state or local WIC agency;
- (24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (25) Permit the purchase of supplemental food without requiring other purchases;
- (26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- (27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices,
- copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (30) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the

- full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (32) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
 - (33) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (34) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
 - (35) Return the authorized WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program;
 - (36) Offer WIC customers the same courtesies as offered to other customers;
 - (37) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with federal regulations. If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. ~~This applies to authorized vendors for which more than 50% of the annual revenue from the sales of food items comes from WIC transactions.~~ These vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, nor cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors.
 - (38) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
 - (39) Comply with all the requirements for vendor applicants of Subparagraphs (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(7), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training classes on WIC procedures and rules;
 - (2) Monitor the vendor's performance under this agreement to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
 - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
 - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
 - (5) Keep records of the transactions between the parties under this agreement pursuant to 10A NCAC 43D .0206.
- (e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.

- (1) In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
- (2) A pattern, as referenced in 7 C.F.R. 246.12(l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:
 - (A) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
 - (B) two occurrences of vendor overcharging within a 12-month period;
 - (C) two occurrences of receiving, transacting or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
 - (D) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
 - (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
 - (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

(h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be

disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule.

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
 - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
 - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
 - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
 - (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo in accordance with Paragraph (b)(10) of this Rule.
 - (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) offering improper incentives, free merchandise, or services by a predominantly WIC vendor in accordance with

- Subparagraph (c)(37) of this Rule.
- (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.
 - (D) 15 points for:
 - (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the state agency;
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit; or
 - (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier.
- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.
- (i) For investigations pursuant to this Section, a single investigation is:
 - (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food instruments for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly transact a WIC food instrument;
 - (J) requiring a cash purchase to transact a WIC food instrument;
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; or
 - (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
 - (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;

- (C) failure to allow monitoring of a store by WIC staff when required;
- (D) failure to provide WIC food instrument(s) for review when requested;
- (E) failure to provide store inventory records when requested by WIC staff;
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
 - (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (E) nonpayment of a claim made by the state agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.
- (j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.
- (l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:
 - (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
 - (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
 - (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
 - (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
- (m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
- (n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.
- (o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.
- (p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or

replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991;
December 1, 1990;
Temporary Amendment Eff. June 23, 2000; May 17, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. September 1, 2002; July 1, 2002;
Amended Eff. November 1, 2005; August 1, 2004;
Temporary Amendment Eff. July 1, 2006.*

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

Beryl E. Wade

Melissa Owens Lassiter

A. B. Elkins II

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Roy L. Simpson Jr v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1102	Gray	10/25/05	
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Setapart, Marlonna Thomas v. DHHS, Div. of Public Health	05 DHR 1147	Mann	02/17/06	20:22 NCR
Wilbert S. Artis v. DHHS, DFS, Santana T. Deberry	05 DHR 1165	Gray	02/16/06	
Patricia Collins v. OAH	05 DHR 1168	Lassiter	02/17/06	
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Shirley Michelle Reinhardt v. DHHS, DFS	05 DHR 1218	Lassiter	10/24/05	
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Joseph Lawrence James, Health Care Registry	05 DHR 1359	Lassiter	03/14/06	
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Melisa Ann Jacobson v. NCOAH	06 DHR 0136	Wade	04/26/06
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 David Upchurch v. Criminal Justice Education and Training Stds. Comm. 04 DOJ 1157 Lassiter 05/13/05
 Phillip William Engle v Sheriffs' Education and Training Stds. Comm. 04 DOJ 1283 Mann 06/28/05 20:03 NCR 148
 Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm. 04 DOJ 2194 Gray 06/28/05
 Richard Michael Ashley v. Criminal Justice Education & Stds. Comm. 04 DOJ 2256 Wade 10/17/05

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 Phillip Ray Cox v. Company Police Program 05 DOJ 0895 Elkins 11/30/05
 Kevin Jon Kern v. Criminal Justice Education & Training Stds. Comm. 05 DOJ 0928 Lassiter 10/10/05
 Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm. 05 DOJ 0929 Gray 09/12/05
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Robert A. Gabriel , Sr., v. Dept. of State Treasurer	05 DST 0586	Gray	10/21/05	
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Thelma Diane Phillips v. DST, Retirement Division	05 DST 1324	Gray	03/10/06	
Robert A. Gabriel v. Dept. of State Treasurer	05 DST 1358	Gray	09/23/05	
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Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section	95 EHR 0317	Gray	07/06/05	
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Country Lake Estates Associates, by and through, David T. Hawks, Managing Principal, Permit No. NC0055051 v. Div. of Water Quality, Raleigh Regional Office, Department of Human and Natural Resources, by and Through, William G. Ross, Secretary	01 EHR 0413	Gray	04/10/06	
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<u>OFFICE OF STATE PERSONNEL</u>				
Charles D Bailey v Department of Cultural Resources	02 OSP 0002 ⁴	Conner		09/12/05
Leavander J. Cheeks v Department of Cultural Resources	02 OSP 0002 ⁴	Conner		09/12/05
Jodi M. Dolan v. Dept. of Correction	02 OSP 2300	Lassiter		03/23/06
Vicki B Tamer v. Department of Public Instruction	03 OSP 0243	Gray		08/15/05
Brenda Haug v. Employment Security Commission of North Carolina, Harry Payne, Commissioner, Sharon Morris, Director of Human Resources, Rick Elingburg, Office Manager	03 OSP 0589	Gray		03/08/06
Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner		09/12/05
Howard Len Henderson v. DHHS, Cherry Hospital	03 OSP 0705	Chess		02/20/06
Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade		05/17/05
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 0851 ⁵	Conner		11/07/05

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Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05	
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1141 ⁵	Conner	11/07/05	
Michael B. Carraway v. Wildlife Resources Commission, Div. of Wildlife Management	03 OSP 1545	Gray	09/07/05	
Jack Mason v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1555	Gray	09/07/05	
David Thomas Sawyer v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1556	Gray	09/07/05	
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1743 ⁵	Conner	11/07/05	
Robert Earl Regan, Jr v DCCPS, State Highway Patrol	03 OSP 2321	Conner	09/12/05	
Wanda Thompson v. Pitt Public Health Center	04 OSP 0116	Gray	11/23/05	
Edward Todd Suttles v. Crime Control and Public Safety State Highway Patrol	04 OSP 0711	Wade	01/03/06	
James A Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	06/28/05	
Willie Steve Tellado v Dept. of Transportation	04 OSP 0858	Wade	07/18/05	
Jack E. Curtis v. DOC	04 OSP 1005	Conner	01/10/06	
Donald E. Cline, PH.D v. J.H. Lyall, PH.D, O'Berry Center	04 OSP 1091	DeLuca	10/05/05	
Mona Dale Batten v Columbus Co Department of Social Services	04 OSP 1194	Gray	09/07/05	
Donald E. Cline, PH.D v. J.H. Lyall, PH.D, O'Berry Center	04 OSP 1247	DeLuca	10/05/05	
Loretta G Hooks v. Department of Corrections	04 OSP 1266	Wade	07/11/05	
Demeatress Gholston v. NCSU, Computer Science Department	04 OSP 1279	Mann	02/01/06	
Clayton R. Richardson v. Winston-Salem State University	05 OSP 1343	Lassiter	01/18/06	
Melvin G. Cline, Jr., v. J. Iverson Riddle Development Center and the NC Department of Health and Human Services	04 OSP 1360	Wade	12/15/05	
Wayne Pettit v Department of Correction	04 OSP 1458	Gray	08/04/05	
Carroll (ED) Swain v. UNC-Chapel Hill	04 OSP 1476	Gray	09/20/05	
Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05	20:05 NCR 291
Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05	
Michael A. Kelly v. DENR	04 OSP 1572	Gray	12/28/05	
Steven Wayne Mobley v. DENR	04 OSP 1573	Gray	12/28/05	
Shelli Henderson Rice v. ESC of NC	04 OSP 1574	Gray	06/27/05	
James O. Mitchell v. DOT	04 OSP 1639	Elkins	11/28/05	
V Wayne Johnson v Department of Transportation	04 OSP 1716	Elkins	07/06/05	
Beverly R Lee v. Employment Security Commission of NC	04 OSP 1742	Conner	08/03/05	
David J. Savage v. DOI	04 OSP 1773	Lassiter	01/18/06	
Linda Wiggs v. DENR	04 OSP 1863	Mann	01/11/06	
Robert D Jones v Hendsen County Dept. of Public Health	04 OSP 2081	Gray	08/01/05	
Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05	
Regina C Gaither v. Forsyth Co Department of Social Services	05 OSP 0047	Conner	06/27/05	
Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05	
Tracy L. Phillips v. North Carolina A & T State University	05 OSP 0183	Mann	03/03/06	
Percy L. Edwards v. Dept. of Juvenile Justice & Delinquency Prevention	05 OSP 0252	Lassiter	11/30/05	
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05	
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05	
Peggy Anderson v. Whitaker School, NC DHHS	05 OSP 0427	Gray	10/25/05	
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05	
Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05	
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05	
James Albert Keyes v. DOT	05 OSP 0553	Gray	12/15/06	
Mary K French Fornes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05	
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05	
Gloria Woodard v. Lyndo Tippett, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05	
William Rhodney Reep v. DOT, DMV	05 OSP 0717	Lassiter	11/08/05	
Kenneth Ray Sholar v. New Hanover County Health Department	05 OSP 0774	Wade	04/21/06	
Glendora Key v. UNC at Chapel Hill	05 OSP 0784	Gray	09/23/05	
Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05	
Joey Todd v. Bladen County Dept. of Social Services	05 OSP 0804	Conner	01/06/06	
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05	
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05	
Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05	
Donna P. Minelli v. DOC, Div. of Community Corrections	05 OSP 0889	Conner	10/21/05	
Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05	
Destrik A. Burns v. Albemarle Correctional Institution	05 OSP 0924	Gray	03/13/06	
Susan Hilbourn v. Cumberland County Department of Social Services	05 OSP 0970	Gray	12/07/05	
Albert Ridley v. Odom Correctional Institution, Lawrence Solomon	05 OSP 0989	Gray	10/25/05	
Tammy F. Brogdon v. Durham Co. Dept. of Social Services	05 OSP 1009	Elkins	03/07/06	
Mark P. Gibbons v. Derrick Lee, DOT Plymouth, NC, Robby Taylor, DOT, Creswell, NC	05 OSP 1080	Elkins	10/12/05	
Cindy Owens v Justice Academy	05 OSP 1038	Conner	09/19/05	
Melanie Caudle Pitrolo v. Western NC Regional Air Quality Agency	05 OSP 1075	Conner	12/21/05	
Elva Catalina Lay v. Durham Dept. of Social Services	05 OSP 1112	Chess	02/22/06	
Thomas M. Chamberlin v. Vance-Granville Community College	05 OSP 1170	Chess	09/30/05	
Johnnie V. Carpenter v. DOA	05 OSP 1199	Morrison	03/29/06	
Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME	05 OSP 1221	Chess	10/11/05	
Lolita B. Keel v. Dept. of Revenue	05 OSP 1228	Elkins	10/12/05	
David N. Smith v. NC School of Science and Math	05 OSP 1236	Chess	10/04/05	
Gerald R. Tripp v. NC School of Science and Math	05 OSP 1242	Chess	09/22/05	

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Teresa Johnson v. Fayetteville State University	05 OSP 1252	Gray	03/27/06
Tommy Frank Sykes v. Nash County Government	05 OSP 1334	Chess	12/15/05
Damon T. Smith v. Tillery Correctional Center	05 OSP 1353	Wade	04/10/06
David Fleming v. DOT, Division of Highways	05 OSP 1437	Morrison	03/21/06
Debra D Moore v. Irene Wortham Center	05 OSP 1445	Gray	11/02/05
Samuel Faminiba v. DOT	05 OSP 1468	Morrison	12/13/05
Natalynn P (Para) Tollison v. NCSU Human Resources, Diane Sortini, Director and Galen Jones, Assistant Director	05 OSP 1501	Morrison	12/14/05
Frank G. Bermel v. UNC	05 OSP 1563	Lassiter	12/05/05
Athena Prevatte v. UNC-Pembroke, Police Department	05 OSP 1604	Chess	02/28/06
William J. Pendleton v. Butner Public Safety MW Hobgood	05 OSP 1720	Lassiter	01/09/06
Michael D. Beal v. Butner Public Safety MW Hobgood	05 OSP 1722	Lassiter	01/09/06
Walter B. Williams v. Butner Public Safety MW Hobgood	05 OSP 1723	Lassiter	01/09/06
Mimi Jakelsky v. DHHS	05 OSP 1731	Chess	01/13/06
Mary D. Taylor v. Cumberland County Department of Public Health	05 OSP 1899	Morrison	04/11/06
John S. Cmelo v. DOC	05 OSP 1900	Mann	03/24/06
Donna Pierce v. DOC	05 OSP 1901	Wade	05/05/06
Mary F. Parker v. Wilson Technical Community College	05 OSP 1905	Lassiter	01/04/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health And Human Services)	05 OSP 2044	Elkins	03/13/06
Johnnie R. Davis v. DOC	05 OSP 2079	Morrison	03/16/06
Aboubiehi G. Kablan v. UNC Charlotte	05 OSP 2115	Lassiter	03/13/06
Terry Michael Williams v. East Carolina University	05 OSP 2116	Lassiter	02/06/06
Thomas F. Lewin v. DOC	05 OSP 2195	Lassiter	04/07/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health	06 OSP 0028	Elkins	03/13/06
Rafael Leon Garcia v. Dept. Juvenile Justice and Delinquency Prevention	06 OSP 0031	Gray	05/09/06
Sergeant Brandon James Graham v. DOC	06 OSP 0109	Gray	03/21/06
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0135	Gray	03/29/06
Robert Brian Honeycutt v. DOC and Lanesboro Correctional Institution	06 OSP 0381	Gray	05/02/06
Steve Eugene Parker v. Lanesboro Correctional Inst. (4865)	06 OSP 0467	Gray	05/02/06
Donald D. Coley v. Winston-Salem State University	06 OSP 0596	Lassiter	05/12/06
<u>SECRETARY OF STATE</u>			
Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
Silvia Rodriguez v Department of Secretary of State	05 SOS 0926	Lassiter	09/09/05
Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05
Curtis C. Lyons v. Dept. of Secretary of State	05 SOS 1129	Chess	12/12/05
Blanca Rivera v. SOS	05 SOS 1509	Morrison	03/27/06
Harvey White v. Dept. of Secretary of State	05 SOS 2130	Lassiter	02/23/06
<u>UNC HOSPITALS</u>			
Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Lenora White v. UNC Hospitals	05 UNC 0574	Bryan	09/13/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
Tashaia Williams v UNC Hospitals	05 UNC 0684	Conner	07/26/05
Robert C. Green v. UNC Hospitals	05 UNC 0751	Wade	01/06/06
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
De'Juana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Joshua Ryan Lloyd v. UNC Hospitals	05 UNC 1000	Elkins	01/10/06
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05
<u>WILDLIFE RESOURCES COMMISSION</u>			
Linville Land Harbor POA, Inc., by Kevin N. McCracken v. Wildlife Resources Commission	05 WRC 1268	Gray	03/07/06
Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05

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