

NORTH CAROLINA

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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	
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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
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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
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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: 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 HUMAN SERVICES

Substantive (≥\$3,000,000)
 None

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend the rule cited as 10A NCAC 14C .3301.

CHAPTER 14 – DIRECTOR, DIVISION OF FACILITY SERVICES

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

Proposed Effective Date: November 1, 2006

SECTION .3300 - CRITERIA AND STANDARDS FOR AIR AMBULANCE

Public Hearing:
Date: September 7, 2006
Time: 10:00 a.m.

10A NCAC 14C .3301 DEFINITIONS

Location: Room 201, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

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

Reason for Proposed Action: Pursuant to 10A NCAC 14A .0101, a petition for Rulemaking filed by Duke University Health System.

- (1) "Air ambulance" as defined in G.S. 131E-176(1a).
- (2) "Air ambulance service" means an entity engaged in the operation of an air ambulance transporting patients.
- (3) "Air ambulance service area" means a geographic area defined by the applicant from which the project's patients originate.
- (4) "Approved air ambulance" means either a rotary air ambulance or a fixed wing air ambulance that was not operational prior to the beginning of the review period but which had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c.7, s. 12.
- (5) "Capacity of fixed wing air ambulance" means the maximum number of hours the aircraft can be operated as defined by the aircraft manufacturer.
- (6) "Existing air ambulance" means either a rotary air ambulance or a fixed wing air ambulance in operation prior to the beginning of the review period.
- (7) "Inter-facility patient transport" means the transport of a patient from one facility to another facility.
- (8) "Level 2 trauma center" as defined in North Carolina's Trauma Center Criteria developed by the OEMS pursuant to 10A NCAC 03D .3201(16).
- (9) "Patient" as defined in G.S. 131E-155(16).
- (10) "Scene transport" means the transport of a patient from the scene of a medical emergency.
- (11) "Base of an air ambulance service" means the site at which medical control and operation of an air ambulance is located. Unless otherwise

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Elizabeth K. Brown, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919)855-3751, fax (919)733-2757, email elizabeth.brown@ncmail.net.

Comment period ends: September 15, 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

specified, if an air ambulance service provider is a health service facility, the base of an air ambulance service shall be presumed to be the facility itself. Notwithstanding anything in this regulation, an air ambulance service provider may station its air Ambulance at an airport within its air ambulance service area between transports, and "base of an air ambulance service" shall not mean or encompass such locations.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rules cited as 10A NCAC 43G .0108 - .0111 and repeal the rules cited as 10A NCAC 43G .0101 - .0105, .0107, .0201 - .0206, .0301 - .0305, .0401 - .0410, .0502 - .0512.

Proposed Effective Date: January 1, 2007

Public Hearing:

Date: August 9, 2006

Time: 1:00 p.m.

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

Reason for Proposed Action: The repeal of these rules and the adoption of four new rules reflect the reorganization of services provided by the Early Intervention Branch's Children's Developmental Services Agencies (formerly named Developmental Evaluation Centers) of the Women's and Children's Health Section. These changes are necessary in order to repeal obsolete rules and to adopt new rules that will enable the Division of Public Health to change eligibility requirements to make children under three years of age eligible for the section's early intervention program.

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/or in writing at the public hearing for these rules.

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: September 15, 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 43G – CHILDREN'S DEVELOPMENTAL SERVICES AGENCIES – EARLY INTERVENTION SERVICES

SECTION .0100 – EARLY INTERVENTION PROGRAM

10A NCAC 43G .0101 ADMINISTRATION

The Developmental Evaluation Center Program is administered by the Children and Youth Section, P.O. Box 27687, Raleigh, NC 27611-7687.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Developmental Disability" shall be defined as a severe, chronic condition which:
 - (a) is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (b) is manifested before the person attains age twenty two;
 - (c) is likely to continue indefinitely; and
 - (d) results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) self care;
 - (ii) receptive and expressive language;
 - (iii) learning;
 - (iv) mobility; and
 - (v) self direction;
- (2) "Developmental Evaluation Center" or "Center" shall mean those administrative units, either direct or contractual, which operate primarily through the resources of, and are designated as centers by, the Division of Public Health. This term does not apply to programs which may deliver services similar to those described in this Subchapter but

which receive primary support from agencies other than the Division of Public Health.

- (3) ~~"Client" shall mean any person who is or has been receiving direct services at or under the direction of personnel of a center.~~
- (4) ~~"Qualified Personnel" shall mean persons whose training and experience are appropriate to the nature of the work in which they are engaged. The term "Qualified Personnel" with reference to personnel conducting program evaluation means personnel employed or specifically approved by the Division of Public Health to conduct evaluations of programs.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0103 LOCATION OF SERVICES

- (a) ~~Developmental Evaluation Center Program Services shall be provided through centers spaced geographically across the state so that these facilities are reasonably accessible to all persons in North Carolina wherever they live.~~
- (b) ~~Each center shall be free of architectural barriers which would deny access to disabled individuals. In centers where access is limited, a plan to provide alternative service delivery shall exist approved by regional and state management within the Specialized Services Branch.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0104 TYPES OF SERVICES PROVIDED

- (a) ~~To meet the comprehensive needs of developmentally disabled children, each center shall assure, either directly or through a contractual arrangement, the availability of interdisciplinary services that encompass the following areas of child development:~~
 - (1) ~~physical;~~
 - (2) ~~psychological;~~
 - (3) ~~educational;~~
 - (4) ~~communicative;~~
 - (5) ~~social; and~~
 - (6) ~~neuromotor.~~
- (b) ~~Each center shall offer the following services to eligible children, their families, or other providers with an emphasis on the catchment area of the center. These services shall be based on the individual needs of the client and the availability of other resources in the community:~~
 - (1) ~~Clinical assessment as described in Rule .0301 of this Subchapter;~~
 - (2) ~~Treatment and client and family instruction as described in Rule .0302 of this Subchapter;~~
 - (3) ~~Case management as described in Rule .0303 of this Subchapter;~~
 - (4) ~~Screening as described in Rule .0304 of this Subchapter; and~~
 - (5) ~~Case specific technical assistance, as described in Rule .0305 of this Subchapter.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0105 ELIGIBILITY FOR DIRECT SERVICES

- (a) ~~Specific criteria to determine a child's eligibility for services are:~~
 - (1) ~~The child shall be under 22 years of age;~~
 - (2) ~~Reasonable evidence shall be present that a developmental disability, potential disability, or special need exists unless the child is being screened;~~
 - (3) ~~Services have been requested by the child, parents, or guardians or with their knowledge and written consent; and~~
 - (4) ~~The child shall be residing in North Carolina, but not necessarily the catchment area of the center.~~
- (b) ~~Of the children who meet these criteria, center directors shall place priority on allocating staff resources to serve young children in the catchment area of the center and other populations as defined and mandated by the Specialized Services Branch.~~
- (c) ~~Decisions about eligibility for services shall be made without regard to the client's ethnic origin, race, sex, or ability to pay for services.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0107 FEES

~~Fees for services provided in the operation of a Developmental Evaluation Center shall be determined on the basis of a schedule of co-payments related to income. Copies of this schedule of co-payments may be inspected at, or obtained from, any Developmental Evaluation Center or the program office. Centers shall also attempt to collect from other appropriate third party funding sources. No one will be denied service based solely on an inability or failure to pay.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0108 ADMINISTRATION

The Department of Health and Human Services is responsible for administering the statewide early intervention program under Federal law, Part C of the Individuals with Disabilities Act (IDEA).

Authority G.S. 130A-126.

10A NCAC 43G .0109 CHILDREN'S DEVELOPMENTAL SERVICES AGENCIES

The Children's Developmental Services Agencies within the Early Intervention Branch shall manage the Early Intervention Program at the local level. Each Children's Developmental Services Agency shall serve children birth to three years of age who have been referred by parents, community agencies, physicians, or other interested parties for early intervention services. The Children's Developmental Services Agency shall determine the child's eligibility for the Early Intervention Program.

Authority G.S. 130A-126.

10A NCAC 43G .0110 ELIGIBILITY

(a) Children from birth to age three are eligible for early intervention services under the provisions of this subchapter and under Part C of the Individuals with Disabilities Education Act (IDEA) if they have been determined by the Children's Developmental Services Agency to meet the criteria of one of the two following categories:

- (1) developmental delay; or
- (2) established conditions.

(b) Developmental Delay.

(1) A child is considered to have developmental delay if the child's development is delayed in one or more of the following areas:

- (A) Cognitive Development;
- (B) Physical Development, including fine and gross motor function;
- (C) Communication Development;
- (D) Social-Emotional Development; or
- (E) Adaptive Development.

(2) The specific level of delay shall be:

- (A) documented by scores of 2.0 standard deviations below the mean of the composite score (total test score) on standardized tests in at least one of the above areas of development; or
- (B) documented by a 30 percent delay on instruments which determine scores in months in at least one of the above areas of development; or
- (C) documented by scores of 1.5 standard deviations below the mean of the composite score (total test score) on standardized tests in at least two of the above areas of development; or
- (D) documented by a 25 percent delay on instruments which determine scores in months in at least two of the above areas of development.

(c) Established Conditions. A child is considered to have an established condition if the child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. Specific conditions through which a child may be deemed eligible in the established conditions category are as follows:

- (1) Congenital Anomaly/Genetic Disorders/Inborn Errors of Metabolism. These are children diagnosed with one or more congenital abnormalities or genetic disorders with developmental implications. Some examples are Down Syndrome, Fragile X Syndrome, familial retardation syndromes, and fetal alcohol syndrome.
- (2) Congenital Infections. These are children diagnosed with congenital infections with developmental implications. Some examples are toxoplasmosis, rubella, cytomegalovirus, and HIV.

- (3) Autism. These are children diagnosed with autism or autism spectrum disorders.
- (4) Attachment disorder. These are children with a diagnosed attachment disorder.
- (5) Hearing Loss. These are children diagnosed with unilateral or bilateral permanent hearing loss.
- (6) Visual Impairment. These are children diagnosed with a visual impairment that is not correctable with treatment, surgery, glasses, or contact lenses.
- (7) Neurologic Disease/Central Nervous System Disorders. These are children diagnosed with a disease or disorder known to affect the nervous system with developmental implications, such as Cerebral Palsy, Spina Bifida, Epilepsy, and Microcephaly.
- (8) Neonatal Conditions and Associated Complications. These are children diagnosed with one or more of the following neonatal diseases or disorders known to have developmental implications:
 - (A) Gestational age less than 27 weeks or birth weight less than 1000 grams;
 - (B) Neonatal encephalopathy with neurological abnormality persisting at discharge from the neonatal intensive care unit;
 - (C) Moderate to Severe Ventricular Enlargement at discharge from the neonatal intensive care unit or a ventriculoperitoneal shunt;
 - (D) Neonatal seizures, stroke, meningitis, encephalitis, porencephaly, or holoprosencephaly;
 - (E) Bronchopulmonary Dysplasia requiring supplemental oxygen at discharge from the neonatal intensive care unit;
 - (F) Intrauterine Growth Retardation;
 - (G) Necrotizing enterocolitis requiring surgery;
 - (H) Abnormal neurological exam at discharge;
 - (I) Intraventricular hemorrhage III or IV; or
 - (J) Periventricular leukomalacia.

Authority G.S. 130A-126.

10A NCAC 43G .0111 SERVICE PLAN – SERVICE DELIVERY

Once a child is determined eligible for the program, the Children's Developmental Services Agency shall develop a service plan based on the child's needs and the requirements of Part C of the Individuals with Disabilities Education Act (IDEA). Service provision shall be monitored by the Children's Developmental Services Agency. The services shall be provided by the following:

- (1) ~~staff of the Children's Developmental Services Agency, or~~
- (2) ~~agencies or individuals within the community who have executed a provider agreement with the Children's Developmental Services Agency.~~

Authority G.S. 130A-126.

SECTION .0200 - AGENCY MANAGEMENT PROCEDURES

10A NCAC 43G .0201 CENTER-PROGRAM OPERATIONS MANUAL

~~Each center shall prepare for public inspection an annually revised center program operations manual to include, at a minimum, the following information:~~

- (1) ~~Center identification information;~~
- (2) ~~Center organizational chart;~~
- (3) ~~The names of current personnel and their professional qualifications;~~
- (4) ~~A description of a specific services offered by the center;~~
- (5) ~~Copies of the center's fiscal documents including total operating budget and source of operating funds;~~
- (6) ~~The center's current "site review" report;~~
- (7) ~~A complete set of the center's forms relating to client services;~~
- (8) ~~Operating procedures including center's hours of operation, application procedures, method for recruiting and responding to client grievances and fee schedule; and~~
- (9) ~~Written procedures regarding entry of prospective clients to assure expedient response to requests for service.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0202 PERSONNEL MANAGEMENT

- (a) ~~Each center shall have written procedures which designate a specific professional staff person, by job title, to be in charge of the center when the director is not available. This responsibility shall be written into the designee's job description.~~
- (b) ~~Each center shall maintain a personnel record of each employee, which includes a current job description that clearly identifies duties and responsibilities.~~
- (c) ~~Each center operated directly by the Division of Public Health shall adhere to the State Personnel Act. Each center operated on a contractual basis by the Division of Public Health shall establish personnel policies and have the policies approved by the Division.~~
- (d) ~~Each center shall provide an orientation program for all new employees.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0203 SAFETY

~~Each center shall have a written plan to assure the safety of employees and others in the event of fire or other emergencies in the building or other facilities of the center.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0204 ANNUAL PROGRAM PLANNING AND PERFORMANCE EVALUATION

~~Each center director shall submit an annual plan of program objectives to the Division of Public Health. This plan shall include performance indicators as well as a narrative plan for services and shall conform to the planning format and process prescribed by the Division of Public Health.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0205 INTEGRATION OF SERVICES WITH LOCAL COMMUNITIES

~~Each center shall obtain information from consumers and local human service agencies to assure integration of center services with those of other agencies in the counties of the catchment area.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0206 FORMS

~~Centers shall use official forms designated by the Specialized Services Branch for clinical and managerial purposes.~~

Authority G.S. 130A-5(3); 130A-124.

SECTION .0300 - SERVICE PROVISIONS

10A NCAC 43G .0301 CLINICAL ASSESSMENT SERVICES

- (a) ~~Clinical Assessments provided by centers shall be comprehensive processes designed to identify the presence of developmental disabilities or special needs, and to determine the extent to which the disabilities or special needs are interfering with the acquisition of competencies commensurate with the client's age.~~
- (b) ~~A clinical assessment is interdisciplinary in nature and shall include, but is not limited to, the collection and review of pertinent historical information, evaluation of overall health status, developmental level, child family relations, and where possible, the etiology of the disabilities.~~
- (c) ~~The tests or procedures employed in clinical assessments shall be appropriate to the client's functional age and cultural experience.~~
- (d) ~~A clinical assessment shall include a written intervention plan for clients. Findings and recommendations of the clinical assessment shall be shared and interpreted with the client's family in order to plan jointly for intervention.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0302 TREATMENT AND CLIENT/FAMILY INSTRUCTION SERVICES

~~(a) Treatment provided by centers includes activities, exercises, counseling, or therapy to ameliorate the identified problem(s) and to facilitate the client's independent functioning. Treatment is based on individual objectives derived from clinical assessment and is appropriately updated according to change in the client's conditions.~~

~~(b) Client and family instruction provided by centers includes the provision and interpretation of information to clients and family members in order to increase their knowledge or skill relevant to identified needs.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0303 CASE MANAGEMENT SERVICES

~~Case Management provided by centers includes service planning and follow up to assist clients in receiving adequate services. Each client who receives direct services shall be assigned a case coordinator who is responsible for Case Management.~~

- ~~(1) Service planning includes activities such as response to requests for services, intake processing, scheduling assessment, and staff meetings to plan for a client's needs.~~
- ~~(2) Follow up includes the contact with the client and agencies to assure that changing needs are recognized and that services are appropriately provided.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0304 SCREENING SERVICES

~~Screening provided by centers is a brief assessment to determine if a client deviates from normal growth and development.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0305 CASE-SPECIFIC TECHNICAL ASSISTANCE SERVICES

~~Case specific technical assistance provided by centers includes information, demonstration, or instruction to another provider who has long term responsibility for the client.~~

Authority G.S. 130A-5(3); 130A-124.

**SECTION .0400 – RECORD-KEEPING:
CONFIDENTIALITY OF CLIENT INFORMATION**

10A NCAC 43G .0401 CONFIDENTIALITY

~~Except for purposes directly connected with the administration of the services provided by the centers or as otherwise provided by rule or statute, no person shall obtain, disclose, use, or authorize, permit or acquiesce in the use of, the medical records of any client applying for or receiving services.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0402 INFORMATION FROM OTHER AGENCIES

~~If the center receives information from another agency or individual, then such information shall be treated as any other information generated by the Division of Public Health or the centers, and disclosure of such information shall also be governed by any condition imposed by the furnishing agency or individual.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0403 OWNERSHIP OF RECORDS

~~(a) Employees of each center shall protect and preserve all client information contained in records of each center operated by the Division of Public Health from dissemination, except as otherwise provided by rule or statute. Each center operated on a contractual basis shall furnish information to the Division pertaining to patient records to assure an efficient transition in services to patients in the event that the contract is terminated or not renewed.~~

- ~~(b) Original client records may not be removed from the premises by individuals other than authorized staff of the center.~~
- ~~(c) The center shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Department of Cultural Resources, Rules of the Department, and State and Federal statutes and regulations.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0404 SECURITY OF RECORDS

~~(a) The center shall provide a secure place with controlled access for the storage of records. Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the center shall be authorized access to the storage area.~~

~~(b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be responsible for the security of the record until it is returned to the storage area.~~

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0405 RIGHT OF ACCESS

~~(a) The center director or a representative shall be present when the client reviews the record. The center director or a representative must document, in the client's record, the review of the record by the client.~~

~~(b) Upon written request from the client, a representative may have access to review or obtain, at reasonable charge, a copy of the information in the client's record. The client may permit the personal representative to have access to his entire record or may restrict access to certain portions of the record.~~

~~(c) Upon written or verbal request the client or the client's parents, the client or the client's parents shall have access to review or obtain, at reasonable charge, a copy of the information in the client's record with the following exceptions:~~

- ~~(1) Confidential information originating from another agency as provided for in .0402 of this Subchapter;~~
- ~~(2) Information shall be deleted if it would breach the right to confidentiality of another~~

individual but shall be released if it does not cause such a breach; and

- (3) Information that is deemed by the center to be potentially harmful to the client.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0406 WITHHOLDING INFORMATION FROM THE CLIENT

(a) When the center director or a delegated representative determines, on the basis of the exceptions in .0705 of this Subchapter, to withhold information requested by the client from the record the reason(s) shall be documented in the client's record.

(b) The center director or a delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in .0405 of this Subchapter the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.

(c) When a delegated representative determines to withhold client information, the decision to withhold shall be reviewed by the supervisor of the person making the initial determination.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0407 CONTESTED INFORMATION

A client may contest the accuracy, completeness, or relevancy of the information in his record. Corrections shall be made by lining through the material and inserting the correct information when the center director or a representative concurs that a correction is justified. Both the material deleted and the material inserted shall be initialed and dated. When the center director or a representative does not concur, the center director or representative shall note the objection as a permanent part of the record and this information shall be disclosed to any recipient of the disputed information. If a representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0408 PROCEDURE OBTAINING PERMISSION FOR RELEASE OF INFORMATION

(a) As a part of the application process for services, the client, his parents or legal guardians, shall be informed of the need for permission for the release of information pertinent to the delivery of center services.

(b) No center shall release any client information or request the release of information from other agencies or individuals without obtaining a signed permission for release of information except as otherwise provided by law or rule.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0409 DISCLOSURE FOR THE PURPOSE OF RESEARCH

Client information may be disclosed to individuals requesting approval to conduct studies of client records without the consent of the client if all information that identifies the client is deleted, if approval is requested in writing, and if the written request specifies and will be approved on the basis of:

- (1) An explanation of how the findings of the study have potential for expanding knowledge and improving professional practices;
- (2) A description of how the study will be conducted and how the findings will be used;
- (3) A presentation of the individual's credentials in the area of investigation;
- (4) A description of how the individual will safeguard information;
- (5) An assurance that no report will contain the names of individuals or any other information that makes clients identifiable; and
- (6) The request is reviewed by the center director and the director's immediate supervisor who is responsible for the client records to be included in this study.

Authority G.S. 130A-5(3); 130A-124.

10A NCAC 43G .0410 DISCLOSURE PURSUANT TO A COURT ORDER

Client information shall be disclosed without the consent of the client in response to a court order.

Authority G.S. 130A-5(3); 130A-124.

SECTION .0500 - DEC CONTRACT FUNDS

10A NCAC 43G .0502 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Division" means the Division of Public Health.
- (2) "DEC" means Developmental Evaluation Center.
- (3) "Program" refers to the Central Office staff responsible for statewide management of the DEC system.
- (4) "Core team" means the range of clinical staff specialists required to assure the availability of basic multidisciplinary services in a DEC.
- (5) "Clinical assessments", "evaluations", or "diagnostic" services refer to comprehensive processes designed to identify the presence of developmental disabilities or special needs, and to determine the extent to which the disabilities or special needs are interfering with the acquisition of competencies commensurate with the child's age.
- (6) "Treatment" refers to activities, exercises, counseling or therapy to ameliorate any identified problem and to facilitate the child's independent functioning.
- (7) "Client and family instruction" refers to the provision and interpretation of information to

clients and family members in order to increase their knowledge or skill relevant to identified needs.

- (8) ~~"Case management" refers to service planning and follow up in order to assist clients in receiving adequate services appropriate for the identified needs and problems.~~
- (9) ~~"Case specific technical assistance" refers to information provision, demonstration or instruction to another agency provider who has long term responsibility for the client.~~
- (10) ~~"Screening" provided by centers is a brief assessment to determine if a client deviates from normal growth and development.~~

Authority G.S. 130A-124.

10A NCAC 43G .0503 PROVIDER ELIGIBILITY

- (a) ~~Public or private non profit organizations are eligible to receive DEC Program funds. Organizations must demonstrate a capability for provision of DEC services as outlined in this Subchapter.~~
- (b) ~~Existing DEC contractors are eligible to receive priority for receive priority for program funds based on their continued compliance with the rules, and on demonstration of acceptable service performance.~~

Authority G.S. 130A-124.

10A NCAC 43G .0504 CLIENT ELIGIBILITY

~~Any child who meets the requirements in Rule .0105 of this Subchapter, or the child's family, may apply for appropriate services. Anyone can refer a client with the family's knowledge and consent. Priority for service provision is placed on younger children and other populations as defined and mandated by the Division.~~

Authority G.S. 130A-124.

10A NCAC 43G .0505 SCOPE OF SERVICES

- (a) ~~Each center shall offer services to eligible children, their families, or other providers with an emphasis on the catchment area of the center. These services shall be based on the individual needs of the client and the availability of other resources in the community. Services must include at least the following: clinical assessment, treatment and client and family instruction; case management, screening and case specific technical assistance.~~
- (b) ~~Within the service limitations of the section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and type of services offered will be negotiated annually with each provider, approved by the program, and detailed in the addendum of the contract.~~

Authority G.S. 130A-124.

10A NCAC 43G .0506 ALLOCATION OF FUNDS

~~(a) A set amount of resources shall be allocated by the program to support a core team staff for each DEC serving a specified catchment area.~~

~~(b) Additional funds and positions will be allocated to DEC's based on population, poverty, and the geographic area which must be traversed in order to assure outreach and service access to children and management criteria. Specific criteria utilized to distribute the funds remaining after base allocations to centers include:~~

- (1) ~~The percentage of children, birth through five years of age, residing in each DEC catchment area as indicated by the most recent information available from the U.S. Census. Statistics on this population group are utilized to distribute 33 percent of the resources.~~
- (2) ~~The percentage of children, six through twenty years of age, residing in each DEC catchment area as indicated by the most recent information available from the U.S. Census. Statistics on this population group are utilized to distribute 17 percent of the resources.~~
- (3) ~~An adjusted percentage of children in poverty from birth through five years of age, residing in each DEC catchment area, computed from the most current U.S. Census data. Statistics on this population group are utilized to distribute 25 percent of the resources.~~
- (4) ~~Cumulative miles of the distances from the area in which the DEC is located to the county seat of each county in the designated catchment area are utilized to allocate 12.5 percent of the resources.~~
- (5) ~~Square miles are computed for each DEC catchment area and 12.5 percent of the resources are allocated on this basis.~~

~~(c) If a contractor is expending funds at a rate which will, if continued, result in an underexpenditure of funds at the end of the contract period, the DEC Program may, after consulting with the contractor, reduce the amount of funds budgeted by an amount consistent with the projected level of underexpenditure. Funds projected to be unexpended may be reallocated to other centers in accordance with community needs and management prerogatives. The DEC Program shall notify the contractor in writing prior to the reduction of funds.~~

~~(d) A contract is signed annually with each DEC contractual provider of service. Contracts for DEC funds are subject to annual renewal and are subject to the availability of funds.~~

~~(e) A contract provider that consistently fails to meet acceptable levels of performance as determined through annual plan reviews, site reviews by the program or data reports from the DEC Data Information System and has been offered state consultation and technical assistance, may have DEC funding reduced or discontinued. Recommendations to reduce or discontinue funding provided to a DEC service provider must be reviewed and approved by the State Health Director.~~

Authority G.S. 130A-124.

10A NCAC 43G .0507 REPORTING REQUIREMENTS

Agencies receiving DEC Program funds must report client and service data through the DEC Data Information System. Data reports that reflect services other than those provided through DEC allocations must be updated quarterly to reflect an appropriate percentage of services that are attributable specifically to DEC funding. This may be accomplished by reporting the following:

- (1) The total operating budget for "DEC" type services.
- (2) The percentage of the entire budget that is allocated from the Division.
- (3) Compute the percentage of the DEC Program services delivered by using the percentage of program funding identified in Rule .0506(b) of this Section.

Authority G.S. 130A-124.

10A NCAC 43G .0508 CLIENT AND THIRD PARTY FEES

(a) DEC contractual agencies are required to bill all available and appropriate reimbursement sources including but not limited to insurance companies, Medicaid, other agency providers or parents/guardians. Outpatient services cannot be billed to the Children's Special Health Services Program by a DEC.

(b) These fees will be based on a public schedule of charges as determined by the DEC Program and on the Title XIX Memorandum of Understanding between the contractor and the division governing Medicaid reimbursement.

(c) All fee collections must be budgeted and expended during the fiscal year earned or within the subsequent fiscal year. Fees will be utilized, upon approval of the program, to either expand program services or to reduce the amount of state appropriations.

(d) All fees held in escrow and brought forward from the prior fiscal year shall be expended prior to the expenditure of state appropriations.

(e) All fees earned in excess of the original budgeted amount cannot be budgeted or expended without prior written approval of the program director and the division.

Authority G.S. 130A-124.

10A NCAC 43G .0509 APPLICATION FOR FUNDS

(a) Grants for DEC funding shall be awarded through a request for proposal (RFP) process that includes notification of interested providers of the eligibility criteria and requirements for funding.

(b) Grant proposals for DEC funds shall be sent to the DEC Program. The grant proposal shall include the following information:

- (1) A DEC Program annual plan which includes an assessment of the need for the clinic services, measurable project objectives, and strategies for meeting the project objectives.
- (2) A proposed budget.
- (3) The plan shall be in accordance with the rules of this Subchapter.

(c) Technical assistance in preparing a grant proposal shall be available from central and regional office branch staff.

(d) The DEC Program shall approve or deny a grant proposal for funds or request additional information within 60 days after receipt of a grant proposal. If additional information is requested, the local provider shall have 45 days to submit the information. Failure by the party to submit the additional information requested within the 45 days shall be grounds for denying the grant proposal. Upon receipt of the additional information, the Branch/Program shall approve or deny a grant proposal for funds within 45 days.

Authority G.S. 130A-124.

10A NCAC 43G .0510 BUDGETING OF GRANT FUNDS

Upon approval of a new application or a renewal of a continuing grant, a budget will be negotiated and a contract signed between the grantee and the program.

Authority G.S. 130A-124.

10A NCAC 43G .0511 ANNUAL PLAN

The contractor will submit an updated annual plan each year according to the DEC Program specifications and within the time frame of the grant request.

Authority G.S. 130A-124.

10A NCAC 43G .0512 RENEWAL OF GRANT FUNDS

When considering renewal of funding the DEC Program shall consider the extent to which objectives and services are provided according to the approved annual plan of operation, progress reviews, site reviews by the program and the extent to which the contract requirements are met.

Authority G.S. 130A-124.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Boiler Safety Bureau intends to repeal the rule cited as 13 NCAC 13 .0817.

Proposed Effective Date: *November 1, 2006*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Requests for a public hearing concerning the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for which the hearing is being requested, the nature of the request, and the complete name(s) and contact information for the individual(s) submitting the request for public hearing.*

Reason for Proposed Action: *Pursuant to NCGS 150B-2(8a)(d), the term "rule" does not include "a form, the contents or substantive requirements of which are prescribed by rule or*

statute." Therefore, 13 NCAC 13 .0817 is unnecessary and should be repealed.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and the contact information for the individual(s) submitting the objection. Objections must be received by 5:00 pm on September 15, 2006.

Comments may be submitted to: Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, phone (919) 733-0368, fax (919) 733-4235, email erin.gould@nclabor.com

Comment period ends: September 15, 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 13 - BOILER AND PRESSURE VESSEL

SECTION .0800 - FORMS

13 NCAC 13 .0817 MENACE TO PUBLIC SAFETY NOTICE

~~The menace to public safety notice is a notice used to inform the public and employees that continued operation of the boiler or pressure vessel in question creates a substantial risk of injury to persons and property.~~

Authority G.S. 95-69.11; 95-69.14.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rules cited 15A NCAC 03L .0208; 03O .0112-.0113; and amend the rules cited as 15A NCAC 03I .0101; 03O .0101-.0102, .0106-.0107, .0501, .0503; 03R .0103.

Proposed Effective Date: December 1, 2006

Public Hearing:

Date: August 1, 2006

Time: 7:00 p.m.

Location: Roanoke Island Festival Park, One Festival Park, Manteo, NC

Date: August 15, 2006

Time: 7:00 p.m.

Location: Department of Environment & Natural Resources, 127 Cardinal Drive, Wilmington, NC

Date: September 27, 2006

Time: 7:00 p.m.

Location: Clam Digger Inn, 511 Salter Path Road, Pine Knoll Shores, NC

Reason for Proposed Action:

15A NCAC 03I .0101: - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 03L .0208 - Fishermen have requested that the Marine Fisheries Commission (MFC) adopt rules governing the harvest of stone crabs. It is reported that some commercial and recreational fishermen are removing both claws and/or retaining the entire crab after harvesting. The proposed rule would afford stone crabs protection while maximizing the potential harvest of this resource.

15A NCAC 03O .0101 - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 03O .0102 - Recreational Fishing Tournament License To Sell Fish Recent striped bass fishing tournaments have sold the striped bass weighed in at their tournaments in conflict with 15A NCAC 03M .0201(b). This rule amendment is needed to make certain that fishes sold under the Recreational Fishing Tournament License to Sell Fish meet the requirements in all other fisheries rules and proclamations.

15A NCAC 03O .0106-.0107 - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The

proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 030 .0112-.0113 - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 030 .0501 - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 030 .0503 - North Carolina General Statutes 113-174.3-4 will go into effect January 1, 2007. These statutes establish a For Hire Blanket Coastal Recreational Fishing License (CRFL) and an Ocean Fishing Pier Blanket CRFL. The proposed new and amended rules listed above are necessary in order to implement the two new licenses mandated by statute.

15A NCAC 03R .0103 - This rule designates Dicks Creek as a Primary Nursery Area (PNA) which will provide additional protection of recreational and commercially important juvenile fish that use this creek as nursery habitat. Dicks Creek meets PNA criteria of species abundance, richness and diversity. Environmental factors such as bottom type and depth also support the PNA designation.

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

Comments may be submitted to: Belinda Loftin, P.O. Box 769, Morehead City, NC 28557, phone (252)726-7021, fax (252)726-0254, email belinda.lofton@ncmail.net.

Comment period ends: September 27, 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 03 - MARINE FISHERIES

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 - GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
(A) Seines less than 30 feet in length;
(B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
(C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
(D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
(E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
(F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
(G) Cast Nets;
(H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
(I) Up to two minnow traps.
(2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
(3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
(4) Possess. Any actual or constructive holding whether under claim of ownership or not.
(5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

- (6) Use. Employ, set, operate, or permit to be operated or employed.
- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
 - (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
 - (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
- (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of fish species.
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development

- control activities authorized by that Act.
- (B) Shellfish producing habitats are those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
- (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
- (I) Fire corals (Class Hydrozoa);
- (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
- (iii) Bryozoans (Phylum Bryozoa);
- (iv) Tube Worms (Phylum Annelida):
- (I) Fan worms (Sabellidae);
- (II) Feather duster and Christmas tree worms (Serpulidae);
- (III) Sand castle worms (Sabellaridae).
- (v) Mussel banks (Phylum Mollusca:Gastropoda);
- (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
- (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
- (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
- (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
- (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
- (i) Sea fans (Gorgonia sp.);
- (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
- (iii) Sea pansies (Renilla sp.).
- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support

- such trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:
- (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
- (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- (48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (51) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames,

with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(52) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(53) For Hire Vessel. As defined by G.S. 113-174 when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.

Authority G.S. 113-134; 113-174; 143B-289.52.

SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

Option 1:

15A NCAC 03L .0208 STONE CRABS (MENIPPE MERCENARIA)

It is unlawful to:

- (1) Possess stone crab bodies, or fail to immediately return stone crab bodies to the waters from which taken;
- (2) Remove, take or possess left claw(s) from stone crabs;
- (3) Remove, take or possess any claw(s) from egg-bearing stone crabs; and
- (4) Use any device to take stone crabs that can puncture, crush, or injure the crab body, such as gigs, spears, grabs, hooks, or similar devices.

Option 2:

15A NCAC 03L .0208 STONE CRABS (MENIPPE MERCENARIA)

It is unlawful to:

- (1) Possess stone crab bodies, or fail to immediately return stone crab bodies to the waters from which taken;
- (2) Remove, take or possess any claw(s) from June 15 through August 15;
- (3) Remove, take or possess any claw(s) from egg-bearing stone crabs;
- (4) Use any device to take stone crabs that can puncture, crush, or injure the crab body, such

as gigs, spears, grabs, hooks, or similar devices; and

(5) Remove, take or possess stone crab claw(s) which have a propodus (forearm) less than two and three quarter inches in length, measured by a straight line from the elbow to the tip of the lower immovable finger. The propodus (forearm) is defined as the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body of the crab.

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

SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES

SECTION .0100 – LICENSES

15A NCAC 03O .0101 PROCEDURE AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application ~~must~~ shall be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three ~~years;~~ years, except Blanket Coastal Recreational Fishing Licenses;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel,

the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;

- (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
- (7) For nonresidents, certification of the state of residency;
- (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (11) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant must shall provide valid certification as a North Carolina certified shellfish dealer. dealer;
- (12) In addition, for the Ocean Fishing Pier Blanket Coastal Recreation Fishing License, a valid Ocean Fishing Pier License issued in the name of the applicant or copy thereof; and
- (13) In addition, for the For Hire Blanket Coastal Recreational Fishing License, the applicant shall provide:
 - (A) For the two hundred fifty dollar (\$250.00) license, a United States Coast Guard (USCG) Operator of Uninspected Passenger Vessel (OUPV) license or an equivalent USCG license;
 - (B) For the three hundred fifty dollar (\$350.00) license, a USCG Master or Mate of Steam, Motor, Or Auxiliary Sail Vessel of not more than 25, 50, or 100 Gross Register Tonnage upon Inland or Near Coastal Waters License, or an equivalent USCG license;
 - (C) Valid documentation papers or current motor boat registration or copies thereof for each vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

(b) To obtain a License to Land Flounder from the Atlantic Ocean:

- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
 - (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.
 - (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
 - (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
 - (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.
 - (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.
 - (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.
- (c) To obtain a Recreational Fishing Tournament License to Sell Fish, the following information is required for a proper application:
- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall ~~must~~ be notarized on the application.
 - (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card,

or passport, or if purchased by mail, a copy thereof.

- (3) The tournament organizer shall ~~must~~ apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall ~~must~~ be notarized on the application;
- (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall be:
 - (A) a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
 - (B) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
 - (C) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (D) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
 - (A) North Carolina voter registration card; or

- (B) Current North Carolina Driver's License; or
- (C) Current North Carolina Certificate of Domicile; or
- (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
- (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information will be deemed incomplete and will not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall ~~must~~ be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall ~~must~~ provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel

registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party will certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.
- (8) Certification that the United States Coast Guard Licenses identified in Subparagraph (a)(13) of this Rule for the issuance of the For Hire Blanket CRFL are current and valid for renewal.

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3-4; 143B-289.52.

15A NCAC 030 .0102 RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH

- (a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
- (b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish ~~dealers~~ dealers and shall comply with all applicable Rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.
- (c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.

Authority G.S. 113-134; 113-168.4; 143B-289.52.

15A NCAC 030 .0106 DISPLAY OF LICENSES AND REGISTRATIONS

- (a) It is unlawful:
 - (1) For any person to use a vessel required to be registered under the provisions of G.S. 113-168.6 in a commercial fishing operation without a current commercial fishing vessel registration decal mounted on an exterior surface so as to be plainly visible when viewed from the port side;
 - (2) To display any commercial fishing vessel registration decal not issued for the vessel displaying it.
- (b) It is unlawful to fail to display any fish dealer's licenses required by ~~G.S. 113-169.3~~ G.S. 113-169.3, ~~or~~ ocean fishing pier license required by ~~G.S. 113-169.4~~ G.S. 113-169.4, or Ocean

Fishing Pier Blanket Coastal Recreational Fishing License (CRFL) per G.S. 113-174.4 in prominent public view in each location subject to licensing.

Authority G.S. 113-168.6; 113-169.3; 113-169.4; 113-174.4; 143B-289.52.

15A NCAC 030 .0107 LOST LICENSE REPLACEMENT

Lost licenses, except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration, whichever is less. The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars (\$5.00).

Authority G.S. 113-134; 113-168.1; 113-168.6; 113-169.4; 113-173; 143B-289.52.

15A NCAC 030 .0112 FOR HIRE COASTAL RECREATIONAL FISHING

(a) It is unlawful for a vessel operator to operate a For Hire vessel unless the vessel operator holds either the For Hire Blanket Coastal Recreational Fishing License (CRFL) or a Division Of Marine Fisheries For Hire Fishing Permit as provided in 15A NCAC 030 .0503(i);

(b) It is unlawful for a For Hire vessel operator to operate under the For Hire Blanket CRFL without:

- (1) Holding the USCG license required in 15A NCAC 030 .0101 (a)(13);
- (2) Having the For Hire Blanket CRFL or copy thereof in possession and ready at hand for inspection;
- (3) Having a current picture identification in possession and ready at hand for inspection; and
- (4) Listing the vessel on the license.

(c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide complete and accurate information as requested by the Division for biological sampling and survey programs.

Authority G.S. 113-134; 113-174.3; 143B-289.52.

15A NCAC 030 .0113 OCEAN FISHING PIER BLANKET COASTAL RECREATIONAL FISHING LICENSE (CRFL)

(a) It is unlawful for an Ocean Fishing Pier owner or operator to operate under the Ocean Fishing Pier Blanket CRFL without having the Ocean Fishing Pier Blanket CRFL in possession and ready at hand for inspection.

(b) It is unlawful for the holder of the Ocean Fishing Pier Blanket CRFL to fail to participate in and provide complete and accurate information as requested by the Division for biological sampling and survey programs.

Authority G.S. 113-134; 113-174.4; 143B-289.52.

SECTION .0500 – PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information as required for specific permits.

(b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;

- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.

(c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
- (2) Permit to Transplant Oysters from Seed Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;
- (5) Depuration Permit.

(d) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) For Hire Fishing Permits:

- (1) A permittee shall hold a valid a United States Coast Guard (USCG) Operator of Uninspected Passenger Vessel (OUPV) license; or a USCG Master or Mate of Steam, Motor, Or Auxiliary Sail Vessel of not more than 25, 50, or 100 Gross Register Tonnage upon Inland or Near Coastal Waters License; or an equivalent USCG license;
- (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for each vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

~~(g)~~ Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

~~(g)~~~~(h)~~ A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107,

03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

~~(h)~~(i) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

~~(i)~~(j) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

~~(j)~~(k) Permits shall be valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(k)~~(l) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

~~(l)~~(m) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

~~(m)~~(n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

~~(n)~~(o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

~~(o)~~(p) Permit applications shall be available at all Division Offices.

~~(p)~~(q) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use

Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

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

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

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
 - (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
 - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
 - (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction

- or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
 - (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) The joint and coastal fishing waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03J .0209.
- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
 - (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
 - (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
 - (e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are set forth in 15A NCAC 03J .0107.
 - (f) Aquaculture Operations/Collection Permits:
 - (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an

Aquaculture Operation Permit from the Fisheries Director.

(2) It is unlawful:

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

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

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

(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.

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

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

(g) Scientific or Educational Collection Permit:

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

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

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

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

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

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

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

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

(h) Under Dock Oyster Culture Permit:

(1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.

(2) An Under Dock Oyster Culture Permit shall only be issued in accordance with provisions set forth in G.S. 113-210(c).

(3) The applicant shall provide certification of completion of mandated training as required by G.S. 113-210(j).

(4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.

(i) For Hire Fishing Permit:

(1) It is unlawful for a vessel operator to operate a For Hire vessel unless the vessel operator holds either the For Hire Blanket CRFL as described in 15A NCAC 03O .0112 or a For Hire Fishing Permit issued by the Division.

(2) It is unlawful for the permittee to fail to notify the Division immediately of any changes to the vessel information, including additions or deletions of vessels listed on the permit.

(3) The For Hire Fishing Permit is valid for one year from the date of issuance.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

(1) In the Roanoke Sound Area:

(a) Shallowbag Bay:

(i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W; running northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and west of a line that crosses a canal on the east side of

- Dough Creek beginning on the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W;
- (ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W.
- (b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point 35° 53.3474' N - 75° 37.9430' W.
- (2) In the Northern Pamlico Sound Area:
 - (a) Long Shoal River:
 - (i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;
 - (ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;
 - (iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore to a point 35° 35.7093' N - 75° 53.7335' W;
 - (iv) Muddy Creek - east of a line beginning on the north shore at a point 35° 36.4566' N - 75° 52.1460' W; running southerly to the south shore to a point 35° 36.2828' N - 75° 52.1640' W;
 - (v) Pains Bay - north of a line beginning on the west shore at a point 35° 35.4517' N - 75° 49.1414' W; running easterly to the east shore to a point 35° 35.4261' N - 75° 48.8029' W;
 - (vi) Otter Creek - southwest of a line beginning on the west shore at a point 35° 33.2597' N - 75° 55.2129' W; running easterly to the east shore to a point 35° 33.1995' N - 75° 54.8949' W;
 - (vii) Clark Creek - northeast of a line beginning on the north shore at a point 35° 35.7776' N - 75° 51.4652' W; running southeasterly to the south shore to a point 35° 35.7128' N - 75° 51.4188' W;
 - (b) Far Creek - west of a line beginning on the north shore at a point 35° 30.9782' N - 75° 57.7611' W; running southerly to Gibbs Point to a point 35° 30.1375' N - 75° 57.8108' W;
 - (c) Middletown Creek - west of a line beginning on the north shore at a point 35° 28.4868' N - 75° 59.8186' W; running southwesterly to the south shore to a point 35° 28.1919' N - 76° 00.0216' W;
 - (d) Wyosocking Bay:
 - (i) Lone Tree Creek - east of a line beginning on the north shore at a point 35° 25.6048' N - 76° 02.3577' W; running southeasterly to the south shore to a point 35° 25.1189' N - 76° 02.0499' W;
 - (ii) Wyosocking Bay - north of a line beginning on the west shore at a point 35° 25.7793' N - 76° 03.5773' W; running northeasterly to the east shore to a point 35° 25.9585' N - 76° 02.9055' W;
 - (iii) Douglas Bay - northwest of a line beginning on Mackey Point at a point 35° 25.2627' N - 76° 03.1702' W; running southwesterly to the south shore to a point 35° 24.8225' N - 76° 03.6353' W;
 - (iv) Tributaries west of Brown Island - west of a line beginning on Brown Island at a point 35° 24.3606' N - 76° 04.4557' W; running southerly to the north shore

- of Brown Island to a point 35° 24.2081' N - 76° 04.4622' W; and northwest of a line beginning on the south shore of Brown Island at a point 35° 23.8255' N - 76° 04.4761' W; running southwesterly to a point 35° 23.6543' N - 76° 04.8630' W;
- (e) East Bluff Bay - Harbor Creek east of a line beginning on the north shore at a point 35° 21.5762' N - 76° 07.8755' W; running southerly to a point 35° 21.4640' N - 76° 07.8750' W; running easterly to the south shore to a point 35° 21.4332' N - 76° 07.7211' W;
 - (f) Cuning Harbor tributaries - north of a line beginning on the west shore at a point 35° 20.7567' N - 76° 12.6379' W; running easterly to the east shore to a point 35° 20.7281' N - 76° 12.2292' W;
 - (g) Juniper Bay:
 - (i) Upper Juniper Bay - north of a line beginning on the west shore at a point 35° 23.1687' N - 76° 15.1921' W; running easterly to the east shore to a point 35° 23.1640' N - 76° 14.9892' W;
 - (ii) Rattlesnake Creek - west of a line beginning on the north shore at a point 35° 22.9453' N - 76° 15.2748' W, running southerly to the south shore to a point 35° 22.8638' N - 76° 15.3461' W;
 - (iii) Buck Creek - north of a line beginning on the west shore at a point 35° 21.5220' N - 76° 13.8865' W; running southeasterly to the east shore to a point 35° 21.3593' N - 76° 13.7039' W;
 - (iv) Laurel Creek - east of a line beginning on the north shore at a point 35° 20.6693' N - 76° 13.3177' W; running southerly to the south shore to a point 35° 20.6082' N - 76° 13.3305' W;
 - (v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore to a point 35° 21.9708' N - 76° 15.6825' W;
 - (h) Swanquarter Bay:
 - (i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;
 - (ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W;
 - (iii) Caffee Bay:
 - (A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;
 - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W;
 - (C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point 35° 21.5451' N - 76° 17.4966' W.
 - (i) Rose Bay:
 - (i) Rose Bay - north of a line beginning on the west shore at a point 35° 26.6543' N - 76° 25.3992' W; running easterly to Channel Marker "6"; running northeasterly to Watch Point to a point 35°

- 26.8515' N - 76° 25.0055' W;
- (ii) Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W;
 - (iii) Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W;
 - (iv) Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W;
 - (v) Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W;
 - (vi) Deep Bay:
 - (A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W;
 - (B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the east shore to a point 35° 22.4282' N - 76° 24.5147' W;
 - (vii) Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the south shore to a point 35° 24.6700' N - 76° 23.2171' W;
 - (j) Spencer Bay:
 - (i) Germantown Bay:
 - (A) Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W;
 - (B) Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;
 - (C) Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W;
 - (D) Swan Creek - southeast of a line beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the south shore to a point 35° 24.3899' N - 76° 27.2809' W;

- (ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;
 - (iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375' N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;
 - (iv) Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;
 - (v) Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;
 - (vi) Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W;
 - (vii) Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;
 - (k) Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;
 - (l) Willow Creek - east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;
 - (m) Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W; running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly to the south shore to a point 35° 23.6947' N - 76° 30.1900' W;
 - (n) Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W.
- (3) In the Pungo River Area:
- (a) Fortescue Creek:
 - (i) Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;
 - (ii) Warner Creek - north of a line beginning on the west shore at a point 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;
 - (iii) Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;
 - (iv) Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;
 - (v) Pasture Creek - north of a line beginning on the west shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point 35° 25.9918' N - 76° 31.7224' W;
 - (vi) Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W;

- (vii) Unnamed tributary on the north side of Fortescue Creek - northeast of a line beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east shore to a point 35° 25.7374' N -- 76° 30.7102' W;
- (viii) Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;
- (b) Slade Creek:
 - (i) Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;
 - (ii) Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W;
 - (iii) Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point 35° 27.9430' N - 76° 30.8938' W;
 - (iv) Becky Creek - north of a line beginning on the west shore at a point 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;
 - (v) Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;
 - (vi) Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;
- (vii) Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west shore to a point 35° 28.2567' N - 76° 32.6533' W;
- (viii) Speer Creek - east of a line beginning on the north shore at a point 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;
- (ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W;
- (x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;
- (c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W;
- (d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W;
- (4) In the Pamlico River Area:
 - (a) North Creek:
 - (i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east shore to a point 35° 25.5870' N - 76° 40.0806' W;
 - (ii) East Fork:
 - (A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running

- southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W;
- (B) Unnamed tributary of East Fork - northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;
- (iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N - 76° 39.6811' W;
- (iv) Little East Ease Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;
- (b) Goose Creek:
- (i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;
- (ii) Upper Spring Creek:
- (A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the south shore to a point 35° 16.1857' N - 76° 36.0111' W;
- (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;
- (iii) Eastham Creek:
- (A) Slade Landing Creek - south of a line beginning on the west shore at a point 35° 17.5450' N - 76° 35.9677' W; running southeasterly to the east shore to a point 35° 17.4845' N - 76° 35.8946' W;
- (B) Mallard Creek - north of a line beginning on the west shore at a point 35° 17.8230' N - 76° 36.1314' W; running southeasterly to the east shore to a point 35° 17.7927' N - 76° 36.0330' W;
- (iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35° 17.8166' N - 76° 36.7468' W;
- (v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W;
- (vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore to a point 35° 18.5887' N - 76° 36.7142' W;
- (c) Oyster Creek; Middle Prong:
- (i) Oyster Creek:
- (A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the

- south shore to a point 35° 19.3796' N - 76° 34.0021' W;
- (B) Duck Creek - south of a line beginning on the west shore at a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;
- (ii) James Creek - southwest of a line beginning on the north shore at a point 35° 18.6045' N - 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;
- (iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W;
- (iv) Clark Creek:
- (A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W;
- (B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W;
- (5) In the Western Pamlico Sound Area:
- (a) Mouse Harbor:
- (i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;
- (ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W;
- (iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;
- (b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;
- (c) Middle Bay:
- (i) Middle Bay - west of a line beginning on the north shore at a point 35° 14.6137' N - 76° 30.8086' W; running southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W;
- (ii) Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W;
- (d) Jones Bay, west of the IWW:
- (i) Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N - 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;
- (ii) Ditch Creek - south of a line beginning on the west shore at a point 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;
- (iii) Lambert Creek - west of a line beginning on the north

- shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;
- (iv) Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684' N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W;
 - (v) Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;
 - (vi) Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W;
 - (vii) Drum Creek - north of a line beginning on the west shore at a point 35° 14.1764' N - 76° 33.2632' W; running easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W.
- (6) In the Bay River Area:
- (a) Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;
 - (b) Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;
 - (c) Small tributaries from Bell Point to Ball Creek:
 - (i) Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W;
 - (ii) Little Pasture Creek - south of a line beginning on the west shore at a point 35° 09.8944' N - 76° 39.1483'; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W;
- (iii) Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;
 - (d) Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;
 - (e) Bonner Bay:
 - (i) Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N - 76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;
 - (ii) Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149' N - 76° 36.0799' W; running southerly to the south shore to a point 35° 08.3575' N - 76° 36.0713' W;
 - (iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;
 - (iv) Dipping Vat Creek - east of a line beginning on the north shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;
 - (v) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W;
 - (vi) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125'

- N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;
- (f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;
- (g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;
- (h) Tributaries east of IWW at Gales Creek:
- (i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W;
- (ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;
- (i) Tributaries west of IWW at Gales Creek:
- (i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;
- (ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W;
- (iii) Whealton and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;
- (j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;
- (k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;
- (l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east shore to a point 35° 11.2742' N - 76° 35.9822' W;
- (m) Tributaries to Bay River from Petty Point to Sanders Point:
- (i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;
- (ii) Potter Creek - north of a line beginning on the west shore at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;
- (iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;
- (iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N - 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W;
- (v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;
- (n) In Vandemere Creek:
- (i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east

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| <p style="margin-left: 40px;">shore to a point 35° 11.2657' N - 76° 39.5238' W;</p> <p>(ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W;</p> <p>(iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35° 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point 35° 12.1182' W 76° 39.1993' W;</p> <p>(o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;</p> <p>(p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W; running southwesterly to the south shore to a point 35° 09.1449' N - 76° 41.9137' W;</p> <p>(q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W;</p> <p>(r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W.</p> <p>(7) In the Neuse River Area North Shore:</p> <p>(a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point 35° 06.4155' N - 76° 33.9479'; running to the south shore of Swan Island to a point 35° 06.3168' N - 76° 34.0263 W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;</p> <p>(b) Broad Creek:</p> <p>(i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east</p> | <p style="margin-left: 40px;">shore to a point 35° 05.9774' N - 76° 35.3704' W;</p> <p>(ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;</p> <p>(iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;</p> <p>(iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point 35° 05.4868 N - 76° 36.9163' W; north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W, running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W;</p> <p>(v) Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;</p> <p>(vi) Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W;</p> <p>(vii) Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;</p> <p>(viii) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35°</p> |
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| <p>(ix) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;</p> <p>(x) Parris Creek - south of a line beginning on the west shore at a point 35° 05.2445' N - 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;</p> <p>(xi) Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W;</p> <p>(xii) Cedar Creek - south of a line beginning on the west shore at a point 35° 05.3711' N - 76° 35.6556' W; running southeasterly to the east shore to a point 35° 05.2867' N - 76° 35.5348' W;</p> <p>(c) Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;</p> <p>(d) Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point 35° 02.5264' - 76° 39.9901 W;</p> <p>(e) Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;</p> <p>(f) Oriental:</p> <p>(i) Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35°</p> | <p>02.1097' N - 76° 42.1806' W;</p> <p>(ii) Unnamed tributary west of Dewey Point - north of a line beginning on the west shore at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to the east shore to a point 35° 01.3530' N - 76° 42.4323' W;</p> <p>(iii) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W;</p> <p>(iv) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W;</p> <p>(v) Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running southeasterly to the south shore to a point 35° 01.4759' N - 76° 42.9570 W;</p> <p>(vi) Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W;</p> <p>(vii) Shop Gut Creek - west of a line beginning on the north shore at a point 35° 01.2720' N - 76° 42.1500' W; running southerly to the south shore to a point 35° 01.1700' N - 76° 42.1380' W.</p> <p>(g) Dawson Creek:</p> <p>(i) Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point 35° 00.2064' N - 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W;</p> |
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- (ii) Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point 34° 59.6620' N - 76° 45.1156' W; running southerly to the south shore to a point 34° 59.6326' N - 76° 45.1177' W;
- (h) Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W.
- (8) In the Neuse River Area South Shore:
 - (a) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 52.4621' N - 76° 45.9256' W; running easterly to the east shore to a point 34° 52.4661' N - 76° 45.7567' W:
 - (i) Mitchell Creek - west of a line beginning on the north shore at a point 34° 54.4176' N - 76° 45.7680' W; running southerly to the south shore to a point 34° 54.2610' N - 76° 45.8277' W;
 - (ii) Gulden Creek - east of a line beginning on the north shore at a point 34° 54.1760' N - 76° 45.4438' W; running southerly to the south shore to a point 34° 54.0719' N - 76° 45.4888' W;
 - (b) Adams Creek:
 - (i) Godfrey Creek - south of a line beginning on the west shore at a point 34° 57.3104' N - 76° 41.1292' W; running easterly to the east shore to a point 34° 57.2655' N - 76° 41.1187' W;
 - (ii) Delamar Creek - south of a line beginning on the west shore at a point 34° 57.0475' N - 76° 40.7230' W; running southeasterly to the east shore to a point 34° 57.0313' N - 76° 40.7015' W;
 - (iii) Kellum Creek - west of a line beginning on the north shore at a point 34° 55.5240' N - 76° 39.8072' W; running southeasterly to the south shore to a point 34° 55.4356' N - 76° 39.8201' W;
- (iv) Kearney Creek and unnamed tributary - west of a line beginning on the north shore of the north creek at a point 34° 55.1847' N - 76° 39.9686' W; running southerly to the south shore to a point 34° 54.9661' N - 76° 40.0091' W;
- (v) Isaac Creek - south of a line beginning on the west shore at a point 34° 54.2457' N - 76° 40.1010' W; running easterly to the east shore to a point 34° 54.2630' N - 76° 40.0088' W;
- (vi) Back Creek - southeast of a line beginning on the northeast shore at a point 34° 54.6598' N - 76° 39.5257' W; running southwesterly to the southwest shore to a point 34° 54.5366' N - 76° 39.7075' W;
- (vii) Cedar Creek - southeast of a line beginning on the west shore at a point 34° 55.7759' N - 76° 38.6070' W; running easterly to the east shore to a point 34° 55.7751' N - 76° 38.4965' W;
- (viii) Jonaquin Creek - northeast of a line beginning on the west shore at a point 34° 56.1192' N - 76° 38.4997' W; running easterly to the east shore to a point 34° 56.1172' N - 76° 38.4584' W;
- (ix) Dumpling Creek - east of a line beginning on the northwest shore at a point 34° 56.9187' N - 76° 39.5559' W; running southeasterly to the southeast shore to a point 34° 56.8421' N - 76° 39.5155' W;
- (x) Sandy Huss Creek - northeast of a line beginning on the west shore at a point 34° 57.2348' N - 76° 39.8457' W; running southeasterly to the east shore to a point 34° 57.1638' N - 76° 39.7169' W;
- (c) Garbacon Creek - south of a line beginning on the west shore at a point

- 34° 59.0044' N - 76° 38.5758' W; running easterly to the east shore to a point 34° 59.0006' N - 76° 38.4845' W;
- (d) South River:
- (i) Big Creek - southwest of a line beginning on the northwest shore at a point 34° 56.9502' N - 76° 35.3498' W; running southeasterly to the southeast shore to a point 34° 56.8346' N - 76° 35.2091' W;
- (ii) Horton Bay - north of a line beginning on the west shore at a point 34° 59.1936' N - 76° 34.7657' W; running easterly to the east shore to a point 34° 59.2023' N - 76° 34.4586' W;
- (e) Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W;
- (f) Turnagain Bay:
- (i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W;
- (ii) Broad Creek and Persons Creek - southwest of a line beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W;
- (iii) Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W;
- (iv) Tump Creek – east of a line beginning on the north shore at a point 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point 35° 00.0500' N - 76° 29.4897' W;
- (v) Tributary south of Tump Creek – east of a line beginning on the north shore at a point 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point 34° 59.6830' N - 76° 29.3303' W;
- (vi) Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W;
- (vii) Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W.
- (9) West Bay; Long Bay Area:
- (a) Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W;
- (b) Cadduggen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W.
- (10) Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;
- (b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;
- (c) Thorofare Bay:
- (i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W;

- (ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;
 - (d) Nelson Bay:
 - (i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W;
 - (ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;
 - (e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;
 - (f) Oyster Creek, northwest of the Highway 70 bridge;
 - (g) Jarretts Bay Area:
 - (i) Smyrna Creek - northwest of the Highway 70 bridge;
 - (ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore to a point 34° 47.6143' N - 76° 28.6473' W;
 - (iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;
 - (iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;
 - (v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;
 - (vi) Williston Creek - northwest of the Highway 70 bridge;
 - (vii) Wade Creek - west of a line beginning on the north shore at a point 34° 46.3022' N - 76° 30.5443' W; running southerly to the south shore to a point 34° 46.2250' N - 76° 30.3864' W;
 - (viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;
 - (ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;
 - (x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W;
 - (xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the south shore to a point 34° 43.7825' N - 76° 30.3543' W.
- (11) Straits, North River, Newport River Area:
- (a) Straits:
 - (i) Sleepy Creek - north of a line beginning on the west shore at a point 34° 43.3925' N - 76° 31.4912' W; running easterly to the east shore to a point 34° 43.3651' N - 76° 31.3250' W;

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| <p>(ii) <u>Dicks Creek - north of a line beginning on the west shore at a point 34° 43.3858' N - 76° 32.9125' W; running southeasterly to the east shore to a point 34° 43.3912' N - 76° 32.8605' W;</u></p> <p>(iii) Whitehurst Creek - north of a line beginning on the west shore at a point 34° 43.5118' N - 76° 33.3392' W; running northeasterly to the east shore to a point 34° 43.5561' N - 76° 33.1869' W;</p> <p>(b) North River, north of Highway 70 bridge:</p> <p>(i) Ward Creek - north of Highway 70 bridge:</p> <p style="padding-left: 20px;">(A) North Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.9573' N - 76° 34.4208' W; running northeasterly to the northeast shore to a point 34° 46.0511' N - 76° 34.3170' W;</p> <p style="padding-left: 20px;">(B) South Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.4930' N - 76° 34.7622' W; running northeasterly to the northeast shore to a point 34° 45.5720' N - 76° 34.6236' W;</p> <p>(ii) Turner Creek (Gibbs Creek) - west of a line beginning on the north shore at a point 34° 43.4693' N - 76° 37.6372' W; running southerly to the south shore to a point 34° 43.4054' N - 76° 37.6585' W;</p> <p>(c) Newport River - west of a line beginning on the north shore at a point 34° 46.5635' N - 76° 44.3998' W; running southerly to Lawton Point to a point 34° 45.6840' N - 76° 44.0895' W;</p> | <p>(i) Russel Creek - northeast of a line beginning on the north shore at a point 34° 45.5840' N - 76° 39.8020' W; running southeasterly to the south shore to a point 34° 45.5819' N - 76° 39.7895' W;</p> <p>(ii) Ware Creek - northeast of a line beginning on the north shore at a point 34° 46.4576' N - 76° 40.5020' W; running southeasterly to the south shore to a point 34° 46.4125' N - 76° 40.4460' W;</p> <p>(iii) Bell Creek - east of a line beginning on the north shore at a point 34° 47.2805' N - 76° 40.9082' W; running southerly to the south shore to a point 34° 47.0581' N - 76° 40.8854' W;</p> <p>(iv) Eastman Creek - east of a line beginning on the north shore at a point 34° 47.8640' N - 76° 41.0671' W; running southerly to the south shore to a point 34° 47.8027' N - 76° 41.0605' W;</p> <p>(v) Oyster Creek - north of a line beginning on the west shore at a point 34° 46.6610' N - 76° 42.5011' W; running easterly to the east shore to a point 34° 46.7161' N - 76° 42.3481' W;</p> <p>(vi) Harlow Creek - north of a line beginning on the west shore at a point 34° 46.7138' N - 76° 43.4838' W; running northeasterly to the east shore to a point 34° 46.8490' N - 76° 43.3296' W;</p> <p>(vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W;</p> <p>(viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point 34° 43.9328' N - 76° 43.0721' W.</p> <p>(12) Bogue Sound; Bogue Inlet Area:</p> |
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- (a) Gales Creek - north of the Highway 24 bridge;
 - (b) Broad Creek - north of the Highway 24 bridge;
 - (c) Sanders Creek - north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point 34° 42.4903' N - 76° 58.143' W on the east shore;
 - (d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;
 - (e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;
 - (f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;
 - (i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore to a point 34° 42.6310' N - 77° 05.3180' W.
 - (ii) Holland Mill Creek - west of a line beginning on the north shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W.
 - (g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;
 - (h) Queen's Creek - north of state road number 1509 bridge:
 - (i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;
 - (ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W;
 - (iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W;
 - (i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W.
- (13) New River Area:
- (a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
 - (b) New River Inlet area (including Hellgate Creek and Ward's Channel) - all waters south of the IWW from a point on the shoreline 34° 33.0486' N - 77° 18.6295' W running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77° 22.2630' W; running southerly to a point on the shoreline 34° 30.9212' N - 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel;
 - (c) New River:
 - (i) Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east

- shore to a point 34° 33.8260' N - 77° 20.4060' W;
- (ii) Courthouse Bay:
- (A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;
- (B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W;
- (C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W; running southerly to a point near Wilken's Bluff 34° 34.3140' N - 77° 21.6620' W;
- (iii) Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;
- (iv) Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;
- (v) Snead's Creek - northwest of a line beginning on the west shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;
- (vi) Everett Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;
- (vii) Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W;
- (viii) Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;
- (ix) Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;
- (x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;
- (xi) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;
- (xii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;
- (xiii) Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77°

- 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;
- (xiv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W;
- (xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W;
- (d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin:
- (i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W;
- (ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W.
- (14) Stump Sound Area: Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon "15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.082' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals.
- (15) Topsail Sound Area:
- (a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;
- (b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' " W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
- (c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin;
- (d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N - 77° 36.8498' W; running southerly to a point 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running to a point 34° 23.8167' N -

- 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W near Beacon "96"; running along the shoreline to the point of origin.
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; to running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure 8 Island Marina Channel to a point 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS demarkation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]
- (b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;
- (c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W;
- (d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel.
- (17) Greenville Sound Area:
- (a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach.
- (b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;
- (c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 bridge at a point 34° 12.9700' N - 77° 50.0260' W running southerly to the south side of the Bridge at a point 34° 12.8620' N - 77° 50.0550' W;
- (d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin.
- (18) Masonboro Sound Area:
- (a) Masonboro-Myrtle Grove Sound area (west side) -all waters west and northwest of the IWW beginning at a point on the shoreline 34° 12.7423' N - 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin.
- (b) Masonboro-Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line back to the point of origin (with the

- exception of Old Masonboro Channel and Carolina Beach Inlet Channel).
- (19) Cape Fear River Area:
- (a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41" to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;
- (c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point 33° 58.2950' N - 77° 59.0280' W running southerly to the south side of the bridge at a point 33° 58.2250' N - 77° 59.0440' W ;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;
- (ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740' N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' N - 77° 58.3480' W;
- (iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W;
- (iv) Deep Creek - south of a line on the west shore at a point 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;
- (e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W; running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;
- (f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;
- (g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;
- (h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west;
- (i) Oak Island area - all waters north of the IWW from a point on the shoreline 33° 55.2827' N - 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 33° 55.2610' N - 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline 33° 55.7718' N - 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" 33° 55.7199' N - 78° 10.2764' W; running southerly to a point on the shoreline 33° 55.6898' N - 78° 10.2775' W; running along the shoreline back to the point of origin.
- (20) Lockwoods Folly Inlet Area:
- (a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;

- (b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360' W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W;
- (c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W; running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W.
- (21) Shallotte Inlet Area:
 - (a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;
 - (b) Shallotte River (Ocean Flats)-excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;
 - (c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;
 - (d) Saucepan Creek - northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W;
 - (e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach bridge 33° 53.7270' N - 78° 26.3760' W; running southerly to a point on the shoreline 33° 53.7082' N - 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline 33° 53.3827' N - 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89".
- (22) Little River Inlet Area:
 - (a) Gause Landing area - all waters north of the IWW from a point on the shoreline 33° 53.9053' N - 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; 33° 52.0003' N - 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline 33° 52.0290' N - 78° 33.5893' W; running along the shoreline to the point of origin.
 - (b) Eastern Channel Area - all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;
 - (c) The Big Narrows Area:
 - (i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore to a point 33° 52.8040' N - 78° 29.9940' W;
 - (ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W;
 - (iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;
 - (d) Mad Inlet area - all waters south of the IWW from a point on the shoreline 33° 52.3121' N - 78° 30.4990' W; running northerly to a point near the Sunset Beach bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of

- origin; with the exception of Bonaparte Creek;
- (e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point 33° 53.3850' N – 78° 32.9710' W running southerly to the south side of the bridge at a point 33° 53.3580' N – 78° 32.9750' W.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0200 – QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

15A NCAC 18D .0205 CLASSIFICATION OF WATER TREATMENT FACILITIES

(a) With the exception of Class D-Well, the public water system treatment classification shall be based on the source of water and the number of points assigned to each facility as taken from the table in Rule .0203(b) of this Section. Classifications are as follows:

Class C	0-50 points
Class B	51-110 points
Class A	over 110 points

Class D-Well shall be any non-community public water system with hypochlorite solution as the only treatment applied to the water. No operator in responsible charge is required for transient non-community public water systems with ultraviolet light (uv) disinfection and/or softening as the only treatment applied to the water.

(b) The classification of distribution systems shall apply to all community and non-transient non-community public water systems. The distribution system class level shall be the greater of the treatment plant class level from Paragraph (a) of this Rule or the following class level based on the number of service connections and fire protection:

- (1) Class D-DISTRIBUTION shall be any system with 100 or fewer service connections with no fire protection system;
- (2) Class C-DISTRIBUTION shall be any system with more than 100 service connections but not exceeding 1,000 service connections, with no fire protection system;
- (3) Class B-DISTRIBUTION shall be any system with more than 1,000 service connections but not exceeding 3,300 service connections or any system not exceeding 1,000 service connections, with a fire protection system; and
- (4) Class A-DISTRIBUTION shall be any system with more than 3,300 service connections.

(c) Class CROSS-CONNECTION-CONTROL shall be any distribution system with requirement for five or more testable backflow prevention assemblies to be installed within the water distribution system.

Authority G.S. 90A-21(c); 90A-22.

15A NCAC 18D .0206 CERTIFIED OPERATOR REQUIRED

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Water Treatment Facility Operators Certification Board intends to amend the rules cited as 15A NCAC 18D .0205-.0206.

Proposed Effective Date: November 1, 2006

Public Hearing:

Date: August 1, 2006

Time: 10:00 a.m.

Location: Room 1A 201, 2728 Capital Blvd, Raleigh, NC

Reason for Proposed Action: To eliminate requirement for ORC for transient non-community systems.

Procedure by which a person can object to the agency on a proposed rule: A person can object to the agency on a proposed rule by writing, e-mailing, or calling: Lance Bailey, NCWTF0 Certification Board, 1635 MSC, Raleigh, NC 27699-1635, email lance.bailey@ncmail.net, phone (919)715-9571.

Comments may be submitted to: Lance Bailey, NCWTF0 Certification Board, 1635 MSC, Raleigh, NC 27699-1635, email lance.bailey@ncmail.net, phone (919)715-9571, fax (919)715-2726.

Comment period ends: September 15, 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

(a) All public water systems, except transient non-community systems with ultraviolet light disinfection and/or softening as the only treatment applied to the water, shall have a certified operator in responsible charge for each water treatment facility that alters the physical, chemical, or microbiological characteristics of the water; has approved plans for such alterations; or has equipment installed for such alterations. Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office and Division of Environmental Health Public Water Supply Section Regional Office, in writing, within 10 days.

(b) There shall be an operator holding at least a Grade C-Surface certification or above assigned to be on duty on the premises when a surface water treatment facility is treating water. Implementation of this requirement is subject to the following provisions:

- (1) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
- (2) Upon such vacancy the facility shall have 90 days to fill the position with a certified grade C-Surface operator or an operator with a temporary C-Surface certification.

(c) There shall be an operator in responsible charge for the distribution portion of the community and non-transient non-community public water systems. This operator shall possess a valid certificate issued by the Board equivalent to or exceeding the distribution classification of the facility for which he or she is designated. A system serving 100 or fewer service connections is exempt from this requirement if it has an operator in responsible charge as required in Paragraph (a) of this Rule.

(d) Effective July 1, 2003 there shall be an operator in responsible charge for the cross-connection-control facilities of the distribution system for all public water systems required by 15A NCAC 18C to have five or more testable backflow prevention assemblies. This operator shall possess a valid Grade Cross-Connection-Control certificate issued by the Board.

(e) All operators of community and non-transient non-community public water systems shall follow the standard operating procedures established by the operator in responsible charge. Any decisions about water quality or quantity that affect public health which have not been defined in the standard operating procedures shall be referred to the operator in responsible charge or to the certified operator on duty.

Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0208, .0217, and .0219.

Proposed Effective Date: December 1, 2006

Public Hearing:

Date: September 22, 2006

Time: 1:00 pm

Location: NC Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC 27612

Reason for Proposed Action: The Board of Nursing is migrating to a cardless licensure and listing system in Fiscal Year 2006-2007.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129 Raleigh, NC 27602, fax (919) 781-9461 or email jeans@ncbon.com.

Comments may be submitted to: Jean H. Stanley, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211 extension 252, fax (919) 781-9461, email jeans@ncbon.com

Comment period ends: September 22, 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

SECTION .0200 - LICENSURE

21 NCAC 36 .0208 CHANGE OF NAME

~~(a) A duplicate license may be issued and so stamped in the event of a name or address change or loss of license. To receive a duplicate, change, the registrant must submit a written, signed request and provide:~~ provide identifying data, including certificate number and social security number.

- ~~(1) identifying data, including certificate number and social security number;~~
- ~~(2) statement of circumstances surrounding loss, if applicable; and~~
- ~~(3) payment of a duplication fee.~~

(b) ~~In the event of a name or address change, the first license is to be returned to the Board before a duplicate will be issued.~~

Authority G.S. 90-171.23(b)(3); 90-171.27(b).

21 NCAC 36 .0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) apply. In addition, the following definitions apply:

- (1) "Investigation" means a careful and detailed exploration of the events and circumstances related to reported information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.
- (2) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.
- (3) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;
- (2) violence-related crime;
- (3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
- (4) commission of any crime which undermines the public trust;
- (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
- (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (7) practicing or offering to practice beyond the scope permitted by law;
- (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except

- (10) in an emergency situation where a person's life or health is in danger; abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
- (11) harassing, abusing, or intimidating a client either physically or verbally;
- (12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
- (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
- (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
- (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
- (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
- (18) guaranteeing that a cure will result from the performance of professional services;
- (19) altering a license—license, using a license that has been altered or permitting or allowing another person to use his or her license for the purpose of nursing. Altering is defined to include, but is not limited to, by changing the expiration date, certification number, or any other information appearing on the license;
- ~~(20) using a license which has been altered;~~
- ~~(21) permitting or allowing another person to use his or her license for the purpose of nursing;~~
- ~~(20)(22)~~ delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
- ~~(21)(23)~~ violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- ~~(22)(24)~~ accepting responsibility for client care while impaired by alcohol or other pharmacological agents;
- ~~(23)(25)~~ falsifying a client's record or the controlled substance records of the agency; or
- ~~(24)(26)~~ engaging in any activities of a sexual nature with a client including kissing, fondling or

touching while responsible for the care of that individual.

(d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S.150B, Article 3A.

- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
- (2) The following general statutes, rules, and procedures apply unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.
- (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) Board staff shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a

written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

(1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the person who is the subject of the complaint.

- (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
- (B) The Letter of Charges serves as the Board's formal notification to the person that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
- (C) The Letter of Charges does not in and of itself constitute a contested case.

(2) The Letter of Charges shall include the following:

- (A) a short and plain statement of the factual allegations;
- (B) a citation of the relevant sections of the statutes or rules involved;
- (C) notification that a settlement conference shall be scheduled upon request;
- (D) explanation of the procedure used to govern the settlement conference;
- (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and
- (F) if applicable, any sanction or remediation in accordance with Board-adopted policy may be included.

(3) A case becomes a contested case after the person disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any person the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the person, shall be held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

- (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.

- (3) Prior to the commencement of the settlement conference, a form shall be signed by the person which invalidates all previous offers made to the person by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
 - (A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
 - (B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.
- (j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.
- (k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:
 - (1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Part (g)(1)(A) of this Rule;
 - (2) Date, time, and place of the hearing;
 - (3) Notification of the right of a party to represent himself or to be represented by an attorney;
 - (4) A statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
 - (5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, shall be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
 - (6) A statement advising the licensee that a list of all witnesses for the licensee shall be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
 - (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.
- (l) Pre-hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on undisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.
- (1) The pre-hearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
- (2) The pre-hearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.
- (m) Administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with G. S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.
- (n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.
 - (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
 - (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
 - (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
 - (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.
- (o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District

Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Administrative Law Counsel of the Board. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Counsel sitting at hearing.

(q) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel who shall advise the presiding officer. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.
- (2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.
- (3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must

participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
- (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at a reasonable cost.

Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42.

21 NCAC 36 .0219 TEMPORARY LICENSE

The Board may issue a Status P nonrenewable temporary license to persons who have filed a completed application for licensure without examination with correct fee and provided validation of an active license in another jurisdiction. If an applicant indicates prior court conviction(s) or disciplinary action(s) in another jurisdiction, eligibility for a temporary license shall be determined after review of relevant documents.

- (1) The Status P nonrenewable temporary license shall expire on the lesser of six months or the date a full license is issued or when it is determined the applicant is not qualified to practice nursing in North Carolina.
- (2) Status P temporary license shall authorize the holder to practice nursing in the same manner as a fully licensed R.N. or L.P.N., whichever the case may be.
- (3) Holders of valid Status P temporary license shall identify themselves as R.N. Petitioner (R.N.P.) or L.P.N. petitioner (L.P.N.P.), as the case may be, after signatures on records.
- (4) Upon ~~expiration, — expiration — or revocation~~ expiration, or return of the Status P temporary license, the individual shall be ineligible to practice nursing as described in Item (2) of this Rule.

Authority G.S. 90-171.33.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0801, .0803 - .0805, and .0808.

Proposed Effective Date: December 1, 2006

Public Hearing:

Date: September 20, 2006

Time: 1:00 pm

Location: NC Medical Board, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: Need to update and clarify rules to assure all requirements are current and delete requirements that no longer apply to the approval to practice for nurse practitioners.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, fax (919) 781-9461 or email jeans@ncbon.com.

Comments may be submitted to: Jean H. Stanley, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211 extension 252, fax (919) 781-9461, email jeans@ncbon.com

Comment period ends: September 20, 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

SECTION .0800 – APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0801 DEFINITIONS

The following definitions apply to this Section:

- (1) "Medical Board" means the North Carolina Medical Board.
(2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.

- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
(4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
(5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Section.
(6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her/his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Section.
(7) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Rule .0804(g) - .0804(f) of this Section.
(8) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
(9) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
(10) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, shall provide ongoing supervision, collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
(a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.

- (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (11) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:
- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician. may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (12) "Volunteer Approval" means approval to practice consistent with this rule except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.
- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (14) "Interim Status" means limited privileges granted by the Board of Nursing to a graduate of a nurse practitioner educational program meeting the requirements of Rule .0805(a) of this Section or a registered nurse seeking initial approval in North Carolina as defined in Rule .0804(g) ~~.0804(f)~~ of this Section while awaiting final approval to practice as a nurse practitioner.

~~(15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Section for a period not to exceed six months while awaiting notification of successful completion of the national certification examination.~~

~~(15)(46)~~ "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric Gynecologic and Neonatal Nursing Specialties (NCC); and the Pediatric Nursing Certification Board (PNCB).

Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.83.

21 NCAC 36 .0803 NURSE PRACTITIONER REGISTRATION

- (a) The Board of Nursing shall register an applicant who:
- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
 - (2) has successfully completed a nurse practitioner education program as outlined in Rule .0805 of this Section; ~~and~~
 - (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0120(7) and (9); and
 - ~~(4)(3)~~ has supplied additional information as requested ~~necessary~~ to evaluate the application.
- (b) Beginning January 1, ~~2005-2005~~, new graduates of a nurse practitioner program, who are all registered nurses seeking first-time nurse practitioner registration in North Carolina shall:
- (1) hold a Master's Degree in Nursing or related field with primary focus on Nursing;
 - (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; credentialing body, and in addition have met the criteria as outlined in Rule .0805(a) and (c) of this Section; and
 - (3) provide documentation of certification by a national credentialing body.

Authority G.S. 90-18(13); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.83.

21 NCAC 36 .0804 PROCESS FOR APPROVAL TO PRACTICE

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 36 .0803 of this Section;
- ~~(2)(1)~~ submit ~~notification of her/his intent an application for approval~~ to practice on forms provided by the Board of Nursing and the Medical Board. ~~Such notification of intent to practice shall include:~~
 - ~~(A) the practice name, practice address, and telephone number of the nurse practitioner; and~~
 - ~~(B) the practice name, practice address, and telephone number of the primary supervising physician(s).~~
- ~~(3)(2)~~ submit any additional information as requested necessary to evaluate the application.
- ~~(4)(3)~~ have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

~~(c)(b)~~ The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

~~(d)(e)~~ The nurse practitioner's approval to practice shall terminate when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify both Boards in writing. This Rule shall be waived in cases of emergency such as injury, sudden illness or death.

~~(e)(d)~~ Applications for first-time approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.

~~(f)(e)~~ Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

~~(g)(f)~~ Interim status for a nurse practitioner applicant shall be granted to: a registered nurse who ~~is a graduate of a nurse practitioner education program meeting the requirements of Rule .0805(a) of this Section and~~ has met the registration requirements as set forth in Rules .0803 and .0805 of this Section; ~~or a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and~~

~~who meets the nurse practitioner education requirement and has met the registration requirements as set forth in Rules .0803 and .0805 of this Section with the following limitations:~~

- (1) no prescribing privileges;
- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0810(e)(3) of this Section; and
- (4) shall not exceed ~~period of six months.~~

~~(g) First time applicants who meet the qualifications for approval to practice, but are awaiting certification from a national credentialing body as referenced in Rule .0801(16) of this Section, shall be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed six months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.~~

~~(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:~~

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section; and
- (2) complete the appropriate application application;
- ~~(3) receive notification of approval;~~
- ~~(4) meet the quality assurance standards and consultation requirements as outlined in Rule .0810(e)(2) (3) of this Section; and~~
- ~~(5) meet the continuing education requirements as stated in Rule .0807 and .0808(d) of this Section.~~
- ~~(6) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner supervising physician(s) arrangement, or experiences an interruption in her/his registered nurse licensure status, the nurse practitioner shall notify both Boards in writing and the nurse practitioner's approval shall automatically terminate. A waiver to this requirement shall be given in an emergency situation.~~

~~(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.~~

~~(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.~~

(k) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

(l) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, or experiences an interruption in her/his registered nurse licensure status, the nurse practitioner shall notify both Boards in writing and the nurse practitioner's approval shall automatically terminate. A waiver to this requirement shall be given in an emergency situation.

Authority G.S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b).

21 NCAC 36 .0805 EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AS A NURSE PRACTITIONER

~~(a)~~ A nurse practitioner applicant who completed a nurse practitioner education program prior to December 31, 1999 shall provide evidence of successful completion of a course of education that contains a core curriculum including 400 contact hours of didactic education and 400 hours of preceptorship or supervised clinical experience.

(1) The core curriculum shall contain the following components:

~~(a)(A)~~ health assessment and diagnostic reasoning including:

- (i) historical data;
- (ii) physical examination data;
- (iii) organization of data base;

~~(b)(B)~~ pharmacology;

~~(c)(C)~~ pathophysiology;

~~(d)(D)~~ clinical management of common health problems and diseases such as the following shall be evident in the nurse practitioner's academic program:

- (i) respiratory system;
- (ii) cardiovascular system;
- (iii) gastrointestinal system;
- (iv) genitourinary system;
- (v) integumentary system;
- (vi) hematologic and immune systems;
- (vii) endocrine system;
- (viii) musculoskeletal system;
- (ix) infectious diseases;
- (x) nervous system;
- (xi) behavioral, mental health and substance abuse problems;

~~(e)(E)~~ clinical preventative services including health promotion and prevention of disease;

~~(f)(F)~~ client education related to ~~Parts (a)(1)(D) and (E) Sub-items (1)(d) and (e)~~ of this Rule; and

~~(g)(G)~~ role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.

(2) Nurse practitioner applicants exempt from components of the core curriculum

requirements listed in ~~Subparagraph (a)(1) Item (1)~~ of this Rule are:

~~(a)(A)~~ Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.

~~(b)(B)~~ A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying ~~Parts (a)(1)(A) – (C) Sub-items (1)(a) – (1)(c)~~ of this Rule shall be exempt from core curriculum requirements in ~~Parts (a)(1)(D) – (G) Sub-Items (1)(d) – (1)(g)~~ of this Rule. Evidence of satisfying ~~Parts (a)(1)(A) – (C) Sub-Items (1)(a) – (1)(c)~~ of this Rule shall include:

- (i) a narrative of course content; and
- (ii) contact hours.

~~(C) A nurse practitioner seeking initial approval to practice after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in her/his specialty by a national credentialing body.~~

~~(b) Any nurse practitioner applicant who received, first-time approval to practice between January 1, 2000 and July 31, 2004 shall be certified by a national credentialing body as referenced in Rule.0801(16) of this Section or be awaiting initial certification by a national credentialing body for a period not to exceed 18 months from date temporary approval is granted.~~

~~(c) Each nurse practitioner applicant applying for approval to practice in North Carolina shall meet the education requirements as specified in Subparagraph (a)(1) of this Rule and shall provide documentation of certification by a national credentialing body within six months from the date temporary approval is granted.~~

~~(d) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site and made available for inspection upon request by agents of either Board.~~

Authority G.S. 90-18(14); 90-171.42.

21 NCAC 36 .0808 INACTIVE STATUS

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify both Boards by completing the form supplied by both Boards.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice as stipulated in Rules .0803(a)(1), .0804(a), .0806(b), .0807, and .0810 of this Section

and receive notification from both Boards of approval prior to beginning practice.

(d) A nurse practitioner with an inactive approval to practice status of greater than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

~~(e) A nurse practitioner seeking first time approval to practice who has not provided direct patient care as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.~~

Authority G.S. 90-18(13); 90-18.2; 90-171.36; 90-171.83.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01D .0912; 01H .0630 - .0640, .0701, .1003 - .1005, amend the rules cited as 25 NCAC 01C .1007; 01H .0801 - .0802, .0901 - .0902, .0904 - .0905, .1001, .1101 - .1104; 01I .2005, and repeal the rules cited as 25 NCAC 01H .0602, .0604 - .0607, .0609, .0611, .0616 - .0617, .0620 - .0624, .0903, .1002.

Proposed Effective Date: December 1, 2006

Public Hearing:

Date: August 9, 2006

Time: 10:00 a.m.

Location: 116 West Jones Street, Raleigh, NC, Office of State Personnel Conference Room, Administration Building, 3rd floor

Reason for Proposed Action:

25 NCAC 01C .1007; 01I .2005 - An amendment is being proposed to these rules to attempt to clarify its application. Some confusion exists about the terminology "reasonable accommodations" as used in these rules since this term is generally applicable only to persons with disabilities. These rules apply to all employees, those with disabilities and those without disabilities.

25 NCAC 01D .0912 – When an enterprise-wide project, such as the consolidation of some IT functions, results in the need to utilize an employee's competencies for greater effectiveness in another area of an agency or in another agency, this rule will allow for redeployment without posting a vacancy and will assure that the employee's salary is maintained.

25 NCAC 01H .0602, .0604 - .0607, .0609, .0611, .0616 - .0617, .0620 - .0624, .0630 - .0640, .0701, .0801 - .0802, .0901 - .0905, .1001 - .1005, .1101 - .1104 – The Rules in Subchapter H, Recruitment and Selection, needed to be updated for clarity and to include provisions for the Career-Banding Classification

System. In addition, some changes are recommended that would improve the recruitment and selection processes.

Procedure by which a person can object to the agency on a proposed rule:

A person may object to these proposed rules by one of the following methods: A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, an email to peggy.oliver@ncmail.net, a telephone call to Peggy Oliver at (919) 807-4832.

Comments may be submitted to: Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807- 4832

Comment period ends: September 15, 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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .1000 – SEPARATION

25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED

(a) An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include lack of suitable temporary assistance, criticality of the position, and budgetary constraints. ~~Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.~~

(b) Prior to separation, the employing agency shall meet with or at least notify the employee in writing, of the proposed

separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful.

(c) The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful. ~~unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations.~~

(d) Definitions:

- (1) Unavailability is defined as the employee's inability to return to all of the ~~position's~~ position's essential duties and work schedule due to a ~~medial~~ medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the ~~operations~~ needs of the agency and the employee's ~~medical/health~~ medical condition.
- (2) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

Authority G.S. 126-4(7a); 126-35.

SUBCHAPTER 01D - COMPENSATION

SECTION .0900 - TRANSFER

25 NCAC 01D .0912 REDEPLOYMENT

Redeployment - A redeployment is the movement of an employee, without a break in service, from one position to another position within the same agency or the movement of an employee, or an employee and a position, from one agency to another when the move is due to an enterprise-wide project that results in the need to utilize an employee's competencies for greater effectiveness in another area of an agency or in another agency. The following shall apply:

- (1) The employee's salary rate shall not be reduced. When necessary, management may maintain the employee's current class by working the employee against the position.
- (2) The redeployment of an employee is not a grievable issue under G.S.126-34. The receiving agency does not have to post a vacant position to accommodate a redeployment arrangement.

Authority 126-4.

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0602 POSTING AND ANNOUNCEMENT OF VACANCIES

~~(a) All agencies shall select from the most qualified persons to fill vacant positions. Employment shall be offered based upon the job related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence. For purposes of this policy, "political affiliation" is the membership in, participation in, or support of, a particular political party, group, or candidate; "political influence" occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria.~~

~~(b) Vacant positions to be filled in state government shall be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply. The term "agency" as used in this Subsection includes all state departments, institutions, commissions, and boards. The recruitment and selection process shall be consistently applied, non-discriminatory and promote open and fair competition and the hiring of a diverse workforce.~~

~~(c) Vacancies which shall be filled from within the agency workforce shall have an application period of not less than five working days and shall be prominently posted in at least the following locations:~~

- ~~(1) The personnel office of the agency having the vacancy; and~~
- ~~(2) The particular work unit of the agency having the vacancy.~~

~~(d) If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven working days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel shall be described in an announcement which includes at minimum the position number, title, salary range, essential functions, knowledge and skill requirements, minimum training and experience standard, the application period and the appropriate contact person. Each vacancy listing must include a closing date unless the classification has been determined as critical. Factors used in determining critical classifications shall include: agency turnover; number of positions in class; geographic location; scarcity of skills; safety, health or quality of care for clients. Such critical classifications, which shall not require closing dates on vacancy postings, shall be approved by the State Personnel Commission. On those classes determined to be critical, which are considered open, continuous postings, agencies shall determine how long applications shall be considered active. Posting requirements shall not apply to:~~

- ~~(1) Vacancies which must be used to meet management necessity, for which an agency shall not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid~~

reduction in force, and transfer of an employee to an existing opening to avoid the threat of bodily harm.

- (2) ~~Vacancies for positions which have been designated exempt policy making under G.S. 126-5(d).~~
- (3) ~~Vacancies which must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.~~
- (4) ~~Vacancies for positions to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants. The decision to exercise a vacancy posting exception based upon Paragraphs (d)(1) and (3) of this Rule shall be the responsibility of the agency head. The Office of State Personnel is available upon request to provide counsel and guidance in instances of uncertainty.~~

(e) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the state government work force shall be listed simultaneously with the appropriate Employment Security Commission office, as required by G.S. 96-29, and with the Employment Practices and Priorities Section of the Office of State Personnel. Listings shall include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven work days.

(f) If an agency makes an initial effort to fill a vacancy from within the state government work force only, and is unsuccessful, the listing with the Employment Security Commission would take place when a decision is made to recruit outside. A vacancy which an agency will not fill for any reason shall not be listed; if conditions change, it shall then be treated as a new vacancy.

(g) The Office of State Personnel may withhold approval for an agency to fill a job vacancy if the agency cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. If any agency hires any person in violation of these posting requirements, and it is determined by the Office of State Personnel that the employment of the person hired must be discontinued as a result of the posting violation, the agency shall pay such person for the work performed during the period of time between his/her initial employment and separation.

(h) When a vacancy is listed with the Employment Security Commission, the listing agency may not fill the job opening for at least 21 days after the listing has been filed and the local office with which the listing is made shall be notified by the agency within 15 days after the vacancy is filled. Upon agency request the Employment Security Commission may waive the waiting period for filling listed vacancies in job classifications for which the State Personnel Commission has recognized

candidates are in short supply if it hinders the agency in providing essential services.

Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

25 NCAC 01H .0604 APPLICANT INFORMATION AND APPLICATION

(a) The primary source of public information and referral for vacancies in state government is the Employment Security Commission. Interested persons should contact their local ESC Job Service Office.

(b) Applicants applying for a state vacancy must complete and submit a State Application Form (Form PD 107 or its equivalent) to the hiring authority. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) must certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance when submitting an application for formal consideration, or to falsely certify compliance, may be grounds for dismissal from employment. It is not necessary for agencies to accept a State Application Form in the absence of an actual vacancy under active recruitment. Agencies may accept resumes, adopt an interest card system, or develop some other method of recording public interest in vacancies which may develop in the future.

(c) Each agency shall be responsible for investigating the accuracy of statements and the data contained in each individual's application, including the verification of academic and professional credentials. The agency shall inform the applicant in writing that credentials must be verified within 90 days and prior to the granting of permanent status.

(d) When a vacancy is listed with the Employment Security Commission, the local office with which the listing is made shall be notified by the agency within 15 days after the vacancy is filled.

Authority G.S. 96-29; 126-4(4).

25 NCAC 01H .0605 SPECIAL APPLICANT CONSIDERATIONS: AGENCY RESPONSIBILITIES

- (a) Priority Reemployment Consideration. State employees:
 - (1) who have received notification of imminent separation due to reduction in force, or
 - (2) who have been removed from exempt positions, for reasons other than cause, or who have been removed from managerial exempt positions for reasons other than cause but not for a violation of G.S. 126-14.2, or
 - (3) who have been removed from an exempt managerial position for a violation of G.S. 126-14.2; are afforded priority reemployment consideration under the State Personnel Act. A list of all classes having applicants with priority status shall be sent to all agencies by the Office of State Personnel and shall be updated frequently. When a vacancy occurs, the appointing authority must review the latest

list before initiating any recruiting efforts. If the classification of the vacancy appears, a priority certificate must be requested and the appropriate priority afforded. While in most instances priority applicants will be on a priority certificate for classes of their principal qualification, these applicants may apply for any vacancy of their choice. If determined qualified, regardless of whether they are currently on a priority certificate for the class of the vacancy, the priority must be afforded.

(b) ~~Veteran's Preference.~~ State law requires that employment preference be given to veterans, widows of veterans, and wives of disabled veterans. Persons entitled to such preference must so indicate on any application filed. Verifying documentation may be required by the agency if desirable.

(c) ~~Age Limitations.~~

(1) ~~Minimum Age~~ — The minimum employment age is 18. Exceptions are provided under the law if the employing agency procures an Employment Certificate from the County Social Services Department.

(2) ~~Law Enforcement Officers~~ — Law enforcement officers must be at least 21 years of age.

(3) ~~Maximum Age~~ — There is no maximum age for employment.

(d) ~~Employment of Relatives.~~ Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of his immediate family, or if one member will occupy a position which requires influence over another member's employment, promotion, salary administration and other related management or personnel considerations. The intent of this provision is to avoid an employment relationship which would create problems within a work unit or offend the public sense of equal opportunity. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included are the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who may or may not be related, if either occupies a position which requires influence over the other's employment, promotion, salary administration and other related management or personnel considerations.

Authority G.S. 126-4(4); 128-15.

25 NCAC 01H .0606 SELECTION OF APPLICANTS

(a) The selection of applicants for vacant positions shall be based upon a relative consideration of their qualifications for the position to be filled. Using fair and valid selection criteria, the agency will review the credentials of each applicant and determine who possesses the minimum qualifications. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of the most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position must be chosen from the pool of the most qualified applicants. In making the determination of

minimally qualified and most qualified, rules regarding priority consideration must be applied. Advantage shall be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.

(b) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Personnel shall provide technical assistance, upon request, to agencies wishing to design or review selection procedures.

(c) After making the selection decision, the agency shall provide timely written notice of non-selection of all unsuccessful candidates in the most qualified pool.

(d) Each agency shall develop a written Recruitment and Selection Plan according to guidelines provided by the Office of State Personnel contained at 25 NCAC 1H Recruitment and Selection et. seq. The Recruitment and Selection Plan shall meet the particular needs of the agency and provide assurances to employees and applicants that the recruitment and selection process shall be based on fair and valid selection criteria. Agency Recruitment and Selection Plans shall be submitted to the Office of State Personnel for review and approval by the State Personnel Commission. Any changes or additions to agency Recruitment and Selection Plans shall also be submitted to the Office of State Personnel for review and approval by the State Personnel Commission. Those agencies not having a Recruitment and Selection Plan on file and approved by the State Personnel Commission shall follow the process set forth in the Office of State Personnel's Recruitment and Selection Plan contained at 25 NCAC 1H, et. seq...

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

25 NCAC 01H .0607 MINIMUM QUALIFICATIONS

(a) The employee or applicant must possess at least the minimum education and experience requirements, or their equivalent, set forth in the class specification of the vacancy being filled. This shall apply in new appointments, promotions, demotions, transfers, and reinstatements.

(b) The education and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or number of years experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job related experience, one for the other, will be made.

(c) Management is responsible for determining the vacancy specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job related relationship to the minimum standard. Management shall be responsible for the adverse effects resulting from the use of qualification standards that are unreasonably construed.

~~(d) The final determination of qualifications in questionable selection situations rests with the Office of State Personnel.~~

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

25 NCAC 01H .0609 FINAL COMMITMENTS

~~(a) An appointment may be made only if a classified and budgeted vacancy exists in the position complement authorized for the agency. A commitment should not be made to an employee or an applicant until final certification has been obtained through approval by the Office of State Personnel. Questions about funds or other fiscal matters should be directed to the Office of State Budget and Management.~~

~~(b) In order for the Office of State Personnel to certify an appointment, the Office of State Personnel must have a copy of the application for employment which accompanies the Forms PD-105. The application must be completed in every detail and written in blue/black ink or typed.~~

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

25 NCAC 01H .0611 PERIODS OF WAR

~~Periods of war shall include:~~

- ~~(1) World War I (April 16, 1917 through November 11, 1918);~~
- ~~(2) World War II (December 7, 1941 through December 31, 1946);~~
- ~~(3) the Korean conflict (June 27, 1950 through January 31, 1955);~~
- ~~(4) the period of time between January 31, 1955 and the end of the hostilities in Viet Nam (May 7, 1975);~~
- ~~(5) any other campaign, expedition or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.~~

Authority G.S. 126-4(4); 126-4(10); 128-15.

25 NCAC 01H .0616 AGENCY RESPONSIBILITY

~~(a) The Immigration Reform and Control Act (IRCA) of 1986 requires that all U.S. employees be either United States citizens, or aliens with proper work authorization from the U.S. Immigration and Naturalization Service (INS). The IRCA further requires that all employers verify the employment eligibility of persons employed after November 6, 1986.~~

~~(b) All state agencies and universities shall, at the time of hire or no later than the third working day, verify the employment eligibility of all new employees hired after November 6, 1986. Verification must establish both identity and employment authorization, and shall include the completion of federal Form I-9. INS has approved a number of documents which the employee can provide to meet this purpose, and it is not permissible for agencies to specify a certain document type. Form I-9 must be retained for three years after the employee's hiring date, or one year after the employee's separation, whichever is later.~~

~~(c) If an employee's work authorization expires, the agency shall update the Form I-9 to show that the employee has a renewed~~

~~authorization to continue employment; if an authorization renewal cannot be obtained, employment must be discontinued. If a prior employee is reemployed within three years of the initial completion of Form I-9, the employing agency must update and verify eligibility. In instances of promotion, demotion, and/or reemployment involving inter-agency transfer, the original, employing agency must provide to the employee or the receiving agency, upon request, a copy of the most recent Form I-9.~~

Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987.

25 NCAC 01H .0617 EMPLOYEE'S RESPONSIBILITY

~~All employees hired after November 6, 1986, must present documents to the employing agency or university at the time of hire or no later than the third working day which verify their identity and employment eligibility. If an employee is unable to present the actual documents within this time limit, he/she must present a receipt from INS within the three day period validating his/her application for the required documents, and must provide the actual documents within 90 days of initial employment. An employee whose original work authorization has expired must present proof of an authorization renewal in order to remain employed.~~

Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987.

25 NCAC 01H .0620 VERIFICATION PROCEDURES

~~The following procedures shall be followed in order to insure the accuracy and veracity of the verification process:~~

- ~~(1) Agencies are responsible for and shall request from issuing institutions, written verification of applicants' dates of enrollment, degrees awarded, professional licenses, professional registrations and professional certifications. The original(s) of verification response(s) shall be made a part of the agency personnel record and a copy(ies) sent to the Office of State Personnel with the applicant's social security number included on the document(s). When credentials are being verified on a "post hire" basis, agencies will expedite this activity to meet the 90 day deadline.~~
- ~~(2) Methods of acceptable verification are:

 - ~~(a) Telephone Contact To expedite the hiring process, agency staff may telephone the educational institution to verify dates of enrollment and the degree awarded. The same procedure may be used for professional licensure/ registration/ certification. In each case a written follow up request shall be made to insure that written verifications are included in personnel records.~~~~

~~(b) Requests for Verification Letter— These requests may be sent to educational institutions or to professional licensure, registration, and/or certification officials to verify claimed credentials.~~

~~(3) Agencies may request transcripts for verification of credentials, course content, or grades. If transcripts are used for verification of credentials, the original shall be kept for the agency personnel record and a copy sent to the Office of State Personnel with social security number included. If used for course content and grades only, transcripts shall remain with the agency.~~

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0621 AGENCY CERTIFICATION

~~Each agency must certify on the Form PD 107 submitted to the Office of State Personnel for the certification of a new employee that academic and professional credentials have been or will be verified in accordance with statutes, policies, and procedures within 90 days of initial employment and prior to the granting of permanent status.~~

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0622 APPLICANT DISQUALIFICATION

~~When credentials or work history falsification cases are discovered prior to employment, the applicant must be disqualified from consideration for the position in question.~~

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0623 DISCIPLINARY ACTION

~~When credential or work history falsification is discovered after employment by the state, disciplinary action is required and shall be administered in accordance with the following criteria:~~

- ~~(1) If an employee was determined to be qualified and was selected for a position based on fraudulent work experience, educational, registration, licensure or certification information which was a requirement of the position, the employee is to be dismissed, regardless of length of service.~~
- ~~(2) In all other post hire discovery cases of false or misleading information, disciplinary action will be taken, but the severity of such action shall be at the discretion of the agency head. The actions to be taken must be at least one, or a combination, of the following: dismissal; demotion; reduction in pay; written reprimand.~~

~~The agency head's decision, while discretionary, should consider: sensitivity of the agency's mission; sensitivity of the employee's position; effect of the false information on the hiring decision; advantage gained by the employee over other applicants; effect of the false information on the starting salary;~~

~~and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, handicapped condition, or political affiliations.~~

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0624 DISMISSAL

~~Dismissal on the basis of knowingly and willfully providing false information on a state employment application, or knowingly and willfully concealing a dishonorable military discharge shall be accomplished in accordance with the State Personnel Commission's procedures on discipline and dismissal. Providing false information on an employment application or concealing information shall be considered personal conduct for the purposes of implementing the dismissal procedure, except that two weeks' pay in lieu of notice may be given upon the recommendation of the agency and the approval of the Office of State Personnel. Only employees who are career, as that term is defined in G.S. 126-1A, are entitled to the procedures for dismissal set out in the State Personnel Commission's rules on dismissal. (Reference: 25 NCAC 1J .0600, DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL, see .0608; DISMISSAL: CAUSES RELATING TO PERSONAL CONDUCT.)~~

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0630 RECRUITMENT AND SELECTION POLICY

(a) State government shall meet its workforce needs through systematic recruitment programs, selection programs, and career support programs that are designed to identify, attract, and select from the most qualified applicants for State employment, and to encourage diverse representation at all occupational levels of the workforce.

(b) While most positions are filled through systematic recruitment, it is recognized that some positions in State government are exempt from various provisions of the State Personnel Act because of the relationship between the position and the responsibility of elected or appointed officials expected to implement the public policy of the State. While these positions are exempt from various provisions of the State Personnel Act, they are subject to the following requirements:

- (1) If an individual applies for an exempt position, written notification that a position is exempt shall be given to the individual at the time the individual makes application for the exempt position. Written notification that the position is exempt may be contained in the vacancy announcement if the position is posted as exempt, or in a letter that either acknowledges acceptance of an application for an exempt position or contains an offer of employment for an exempt position or a notification that the position is exempt.
- (2) In addition, written notification that a position is exempt shall be given to an employee placed

in an exempt position not less than 10 working days prior to the employee's first day in the exempt position.

- (3) If an employee occupies a subject position that is subsequently designated as exempt, the agency shall provide written notification to the employee that the position has been designated exempt. The exemption shall apply to the employee 10 working days after receiving written notification.

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

25 NCAC 01H .0631 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions shall be publicized by the agency having the vacancy.

(b) Vacancies which shall be filled from within the agency workforce shall have an application period of not less than five working days and shall be prominently posted in at least the following locations:

- (1) The personnel office of the agency having the vacancy; and
- (2) The particular work unit of the agency having the vacancy.

(c) Vacancies to be filled from within or outside the state government workforce shall be listed with the Office of State Personnel. Such vacancies shall have an application period of not less than five working days. For purposes of this Rule, "state government workforce" shall mean those agencies that have employees who are subject at least to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement which includes at minimum:

- (1) For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum training and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0607(c), the application period, and the appropriate contact information.
- (2) For banded classes: the position number, banded class title, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum training and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0607(c), the application period, and the appropriate contact information.
- (3) For all vacancy listings: a closing date shall be given unless the classification has been determined as critical. Factors used in determining critical classifications shall include: agency turnover; number of positions in class; geographic location; scarcity of skills;

safety, health or quality of care for clients. Such critical classifications shall be approved by the State Personnel Commission. On those classes determined to be critical, which are considered open, continuous postings, agencies shall determine how long applications shall be considered active.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision shall be based upon a bona fide business need and is the responsibility of the agency head. Examples are:

- (1) Vacancies that are committed to a budget reduction.
- (2) Vacancies used to avoid a reduction in force.
- (3) Vacancies used for disciplinary transfers or demotions.
- (4) Vacancies to be filled by transfer of an employee to avoid the threat of bodily harm.
- (5) Vacancies that are designated exempt policymaking under G.S. 126-5(d).
- (6) Vacancies that must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.
- (7) Vacancies to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants.
- (8) Vacancies to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a position subject to all provisions of the State Personnel Act.
- (9) Vacancies to be filled by a legally binding settlement agreement.
- (10) Vacancies to be filled in accordance with a formal, pre-existing written agency succession plan.

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy if the agency cannot validate that it complied with these posting requirements. If any agency hires any person in violation of these posting requirements, and it is determined by the Office of State Personnel that the employment of the person hired must be discontinued as a result of the posting violation, the agency shall pay such person for the time worked.

Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION

Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall

certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance when submitting an application for formal consideration, or to falsely certify compliance, may be grounds for dismissal from employment.

Authority G.S. 96-29; 126-4(4).

25 NCAC 01H .0633 SPECIAL APPLICANT CONSIDERATIONS AND EMPLOYMENT OF RELATIVES

(a) Priority consideration shall be given to:

- (1) Employees with career status who have received written notification of imminent separation due to reduction in force,
- (2) Eligible employees who have been removed from exempt positions, for reasons other than cause,
- (3) Eligible employees who have been removed from an exempt managerial position for a violation of G.S. 126-14.2,
- (4) Employees returning from workers' compensation leave,
- (5) Career State employees seeking promotions, and
- (6) Eligible veterans.

(b) Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household or otherwise closely identified with each other, as determined by the agency, who may or may not be related, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

Authority G.S. 126-4(4); 128-15.

25 NCAC 01H .0634 SELECTION OF APPLICANTS

(a) All agencies shall select from the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence. For purposes of this Rule, "political influence" occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria.

(b) Each agency shall develop and maintain a written Recruitment and Selection Plan according to guidelines provided by the Office of State Personnel. The Recruitment and Selection Plan shall provide assurances to employees and applicants that

the recruitment and selection process shall be based on fair and valid selection criteria. Agency plans shall be reviewed by the Office of State Personnel and approved by the State Personnel Commission. Any changes to agency plans shall also be submitted to the Office of State Personnel for review and approval.

(c) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in 25 NCAC 01H .0635 including selective criteria. Selective criteria are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position shall be from among the most qualified applicants.

(d) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

(e) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

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

25 NCAC 01H .0635 MINIMUM QUALIFICATIONS

(a) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. Qualifications include training, experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Personnel, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and reinstatements.

(b) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.

(c) Agency management is responsible for determining the vacancy-specific qualifications that are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements. Management shall be responsible for the adverse effects resulting from the use of qualification standards that are unreasonably construed.

(d) The Office of State Personnel shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

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

25 NCAC 01H .0636 EMPLOYMENT OF ALIENS

(a) The Immigration Reform and Control Act (IRCA) of 1986 requires that all U.S. employees be either United States citizens

or aliens with proper work authorization from the Bureau of U.S. Citizenship and Immigration Services.

(b) All State agencies shall, at the time of hire or no later than the third working day, verify the employment eligibility of all new employees hired after November 6, 1986. Verification must establish both identity and employment authorization and shall follow the requirements of the IRCA.

Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987.

25 NCAC 01H .0637 CREDENTIALS VERIFICATION PROCEDURES

In accordance with G.S. 126-30, for each new employee, agencies shall verify information on applications for State employment that is significantly related to the particular job responsibilities or is used to qualify or set the employee's salary, as determined by the agency. Agencies shall be responsible for obtaining written verification of applicants' post-secondary dates of enrollment, degrees awarded, professional licenses, professional registrations and professional certifications.

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0638 APPLICANT DISQUALIFICATION BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION

When an agency discovers, prior to employment, that an applicant provided false or misleading information on a State application, or its equivalent, in order to meet position qualifications, the applicant shall be disqualified from consideration for the position in question.

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0639 DISCIPLINARY ACTION BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION

When an agency discovers, after employment, that an employee provided false or misleading information on a State application, or its equivalent, or concealed employment history or other required information significantly related to job responsibilities, disciplinary action is required and shall be administered in accordance with the following criteria:

- (1) Disciplinary action, up to and including dismissal, shall be taken, but the severity of such action shall be at the discretion of the agency head.
- (2) The agency head's decision, while discretionary, shall consider: the effect of the false, misleading or concealed information on the hiring decision, the advantage gained by the employee over other applicants, the effect of the false information on the starting salary, and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be made on the

basis of race, creed, color, religion, national origin, sex, age, disability or political affiliation.

Authority G.S. 126-4; 126-30.

25 NCAC 01H .0640 DISMISSAL BECAUSE OF FALSE OR MISLEADING INFORMATION ON STATE APPLICATION

When an agency discovers that an employee was selected based on false or misleading work experience, education, registration, licensure or certification information on the State application, or its equivalent, in order to meet position qualifications, the employee shall be dismissed, regardless of length of service.

Authority G.S. 126-4; 126-30.

SECTION .0700 - PRIORITY CONSIDERATION: GENERAL PROVISIONS

25 NCAC 01H .0701 GENERAL PROVISIONS

(a) It is recognized that certain applicants for positions of State employment may receive a priority over other applicants for the position. Priority consideration in certain situations may be accorded to the following applicants:

- (1) Career State employees applying for a position that is a higher salary grade (or salary grade equivalency) as provided in 25 NCAC 01H .0800.
- (2) Employees with career status and who have received written notification of imminent separation due to a reduction in force.
- (3) Eligible employees in positions which are designated as exempt policymaking and who have less than 10 years of cumulative State service in subject positions as provided in 25 NCAC 01H .1000.
- (4) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service in subject positions and who have been removed from the exempt position for reasons other than cause but not because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000.
- (5) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service and who have been removed from the exempt managerial position because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000.
- (6) Eligible veterans applying for an initial position in State government, as provided in 25 NCAC 01H .1100;

(b) The priority consideration listed in Subparagraph (a)(6) of this Rule may only be asserted against substantially equal or less qualified non-veteran outside applicants or other State

employees who do not fall into any of the categories listed in Subparagraphs (a)(1) – (a)(5) of this Rule.

(c) The priority consideration listed in Subparagraphs (a)(3), (a)(4) and (a)(5) of this Rule may be defeated by an employee with the priority listed in Subparagraph (a)(2) of this Rule or by a current State employee who has greater cumulative State service in positions subject to the State Personnel Act.

Authority G. S. 126-4.

SECTION .0800 - PROMOTIONAL PRIORITY

25 NCAC 01H .0801 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

(a) A promotional priority consideration shall be provided by all agencies to all current state ~~State~~ employees who have achieved career status, as that term is defined in G.S. 126-1A. G.S. 126-1.1.

(b) ~~The Promotional priority consideration which is to be given shall be provided when a career state State employee who applies for a position which represents a promotion for that employee and who otherwise meets the criteria set out in G.S. 126-7.1 is that he shall be offered the position in question. that is a higher salary grade (salary grade equivalency) or has a higher statewide journey market rate and the eligible employee is in competition with outside applicants.~~

(c) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee must receive the job offer over an outside applicant.

~~(e)(d)~~ "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one ~~person~~ applicant are significantly better suited for the position than the job-related qualifications held by another ~~person~~ applicant.

(e) For purposes of this Rule, an outside applicant is any applicant who is not a member of the State government workforce as defined in 25 NCAC 01H .0631(c).

Authority G.S. 126-1A; 126-4; 126-7.1.

25 NCAC 01H .0802 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS

(a) ~~Policy making exempt employees, employees with priority status, employees disabled on the job state employees separated from policy making exempt jobs for reasons other than cause, state employees notified of or separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on the job injury are not considered outside applicants for the purpose of the promotional priority policy. Existing policy and statutory priorities which apply to these employees shall be afforded before the promotional priority for current state employees. Eligible exempt employees with priority consideration and employees with reduction-in-force priority status are not considered outside applicants for the purpose of promotional priority.~~

~~(b) Affirmative Action Considerations Affirmative action policy requires that hiring authorities act affirmatively in~~

~~minimizing or eliminating underrepresentations of women, minorities and handicapped persons throughout all levels of the state's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established underrepresentation of minorities, women, and handicapped persons, and the selection decision will be made from among applicants in the existing state workforce, hiring authorities shall consider and support these affirmative action needs as usual. The promotional priority for current employees only applies when the applicants being considered include persons from outside state government. When the selection consideration involves outside applicants in addition to current state employees, and a current state employee has substantially equivalent qualifications as those of the highest ranking outside applicant who happens to be a member of the underrepresented group, the state employee shall receive the job offer. However, affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of well-qualified persons from the underrepresented categories in the applicant pool. Providing equal employment opportunity requires that hiring authorities act affirmatively in minimizing or eliminating underrepresentations of women, minorities and persons with disabilities throughout all levels of the State's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established under representation of minorities, women, and persons with disabilities, and the selection decision will be made from among applicants in the existing State workforce, hiring authorities shall consider and support these equal employment opportunity needs. Affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of the most qualified persons from the underrepresented categories in the applicant pool.~~

Authority G.S. 126-4; 126-7.1; 126-16.

SECTION .0900 - REDUCTION-IN-FORCE - PRIORITY REEMPLOYMENT

25 NCAC 01H .0901 POLICY

(a) ~~Priority reemployment consideration shall be provided to employees with permanent appointments, employees and apprentices with trainee appointments who have completed six months of service, and employees who had a permanent appointment prior to entering a trainee appointment, career status who have received written notification of imminent separation due to shortage of funds or work, abolishment of a position or other material changes in duties or organization by the process commonly known as reduction in force. reduction in force. An employee who is separated from a time-limited appointment is not eligible for priority reemployment consideration, unless the appointment extends beyond three years.~~

(b) ~~A career state State employee-employee, as defined in G.S. 126-1.1, with priority status- consideration who has reason to believe priority consideration was denied in a selection decision may appeal directly to the State Personnel Commission through the established contested hearing process in accordance with G.S. 126-34.1(a)(5).~~

Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1.

25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION-IN-FORCE PRIORITY CONSIDERATION

Upon written notification of imminent separation through reduction in ~~force,~~ force (RIF), an employee shall receive priority ~~reemployment~~ consideration for a period of 12 months pursuant to G.S. 126-7.1(c1). The following conditions apply:

- (1) If the applicants for reemployment for a position include ~~state~~ State employees currently possessing priority ~~reemployment~~ consideration as a result of ~~reduction in force,~~ RIF, a RIF employee with more than 10 years of service shall receive priority consideration over a RIF employee having less than 10 years of service in the same or related position classification. ~~This reemployment priority shall be given by all State departments, agencies, and institutions.~~
- (2) For employees receiving notification of separation from trainee or ~~flat rate~~ flat rate positions, ~~who are eligible for priority consideration,~~ the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade ~~level~~ shall be the ~~salary~~ grade which has as its ~~mid-point,~~ maximum a rate nearest ~~to the~~ flat rate salary of the eligible employee. For eligible employees in trainee ~~status~~ status, the salary grade ~~level~~ shall be the salary grade of the full class.
- (3) An employee notified of imminent separation through reduction in force while actively possessing priority ~~reemployment~~ consideration from a previous reduction in force shall retain the initial priority for the remainder of the ~~twelve-month~~ 12-month priority period. A new priority consideration period shall then be afforded at the salary ~~grade,~~ grade (or salary grade equivalency), salary rate and appointment status of the position held at the most recent notification of separation. ~~The length of this additional priority period shall be equal to the time between the expiration dates of the old and the new priority, assuming that the second twelve month period started on the date of the most recent notification.~~
- (4) An employee who, after receiving formal notice of impending ~~reduction in force,~~ reduction in force, retires or applies for retirement prior to the separation date ~~thereby~~ waives the right to priority ~~reemployment~~ consideration. An employee who applies for retirement after being separated through ~~reduction in force~~ reduction in force may exercise priority ~~reemployment~~ consideration.

- (5) Priority ~~reemployment~~ consideration is intended to provide employment at an equal ~~employment-appointment~~ status to that held at the time of notification. Acceptance of a position at a lower appointment status shall not affect priority. Employees notified of separation from permanent full-time positions shall have priority ~~reemployment~~ consideration to permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority ~~reemployment~~ consideration to permanent part-time positions only.
- (6) Employees who have priority ~~reemployment~~ status at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete.
- (7) An employee with priority status may not decline interviews or offers for positions within 35 miles of the employee's original work station without losing ~~priority,~~ priority and any remaining severance salary continuation, if the position is at an appointment ~~status~~ status, salary grade (or salary grade equivalency), and salary rate equal to or greater than that held at the time of notification.
- (8) An employee with priority status may accept a temporary position at any level and retain priority ~~reemployment~~ consideration and severance salary continuation. An employee receiving severance salary continuation shall not be employed under a contractual arrangement in any State agency, other than State universities and community colleges, until 12 months have elapsed since the separation as provided by G. S. 143-27.2.
- (9) When priority has been granted for a lower salary grade (or salary grade equivalency) ~~and~~ or salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) and salary rate up to and including that held at the time of the notification of separation.
- (10) An employee with priority ~~reemployment~~ consideration may accept employment outside ~~state~~ State government or in a ~~state~~ State position not subject to the State Personnel Act and retain such consideration through the ~~twelve months~~ 12-month priority period.
- (11) Priority ~~reemployment~~ consideration is terminated when an eligible employee:
 - (a) refuses an interview or offer for a position within 35 miles of the

employee's original ~~work station~~ workstation if the position is at an appointment status and salary grade (or salary grade equivalency) and salary rate equal to or greater than that held at the time of notification;

- (b) accepts a position equal to or greater than the salary grade ~~level, (or salary grade equivalency),~~ salary rate and ~~employment appointment~~ status of the position held at the time of notification; or
 - (c) has received 12 months priority ~~reemployment~~ consideration.
- (12) Priority ~~reemployment~~ consideration for employees notified of or separated through ~~reduction in force~~ reduction in force does not include priority to any ~~policy making/confidential exempt position positions.~~
- (13) When an employee with priority status accepts a position at a lower salary grade (or salary grade equivalency) or salary rate and is subsequently terminated by disciplinary action, any remaining priority consideration ceases.
- (14) An employee with priority status may be required to serve a new probationary period when only when:
- (a) the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of ~~reduction in force~~ reduction-in-force notification, or
 - (b) ~~when the~~ prior, documented performance history of the employee indicates performance failings ~~on tasks in the employee's previous position which bear a strong functional relationship to the essential tasks of the employee's new position,~~ or
 - (c) ~~when the~~ prior, documented unacceptable personal conduct history of the employee ~~includes instances of unprofessional or unbusiness-like behavior, and~~ would make a probationary period a prudent protection of agency interests.

A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction-in-force notification again while serving in probationary status.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .0903 REEMPLOYMENT AFTER PRORIOITY EXPIRATION

~~If an appointment has not been received within the one year priority period, a person previously eligible for priority reemployment will be considered for reemployment under regular applicant procedures.~~

Authority G.S. 126-4(6),(10).

25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall notify the employee of impending separation as soon as possible in accordance with G.S. 126-7.1(a1), and ~~to~~ inform the employee of the priority ~~reemployment~~ consideration to be afforded. To receive the advantage of the statutory priority, an employee must file a completed state application with the employee's agency within 30 days of receipt of written notification of separation. It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel immediately. If the employee does not want assistance in finding another State job, the agency shall ~~get~~ obtain a written statement from the employee to that effect, and ~~file~~ provide a copy ~~with~~ to the Office of State Personnel. ~~For employees wishing to be advantaged by the automated priority referral system operated by the Office of State Personnel, the separating agency must submit an application to the Office of State Personnel immediately.~~

(b) The ~~Agency~~ agency shall notify the Office of State Personnel ~~in writing~~ when:

- (1) ~~An~~ an eligible employee accepts a position ~~which that~~ satisfies the priority ~~reemployment consideration, consideration, or~~
- (2) ~~An~~ an employee with priority status due to ~~reduction in force~~ reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than ~~thirty five~~ 35 miles from the employee's original ~~work station, workstation, or~~
- (3) ~~An~~ an eligible employee separated from a ~~policy making or confidential exempt position~~ exercises priority and then refuses ~~an employment offer.~~
- (4)(3) ~~Other~~ other conditions ~~which that~~ would satisfy or terminate an eligible employee's priority ~~reemployment~~ consideration are discovered.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .0905 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

(a) ~~The Office of State Personnel will~~ shall maintain the names and applications of eligible persons and will provide a priority referral system ~~which places eligibles before agencies and institutions with available vacancies,~~ such that priority consideration may be granted.

~~(b) The Office of State Personnel will also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance will typically include resume preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.~~

Authority G.S. 126-4(6),(10).

SECTION 1000 - EXEMPT PRIORITY CONSIDERATION

25 NCAC 01H .1001 EXEMPT PRIORITY CONSIDERATION

~~(a) Employees removed from policy making/confidential exempt positions, for reasons other than cause, shall receive priority reemployment consideration as follows:~~

~~(1) An eligible employee with 10 or more years cumulative service in subject positions, including the immediately preceding 12 months prior to placement in an exempt position, shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, at the same salary grade and at a salary rate which bears a relationship with the midpoint of the salary range comparable to that of his most recent subject position. The reassignment must be within a 35 mile radius of the exempt position from which separated. If an employee is offered a reassignment which meets these criteria and refuses to accept, the priority is terminated.~~

~~(2) An eligible employee who has the minimum service requirements for career status (G.S. 126-1A) but less than 10 years cumulative service in subject positions prior to placement in an exempt policymaking position, who is removed from an exempt policymaking position for reasons other than cause, shall be permitted to receive a one-time reemployment priority. This priority shall to be exercised by the employee within one year following the effective date of his the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available, available non-exempt position for which he the employee has formally applied and is qualified qualified for, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to separation, placement in the exempt policymaking position provided, unless however, that a prior an offer may be has made been made to to a person qualified under Section 1 above, or to an employee from the same agency in which the vacancy occurs~~

~~with priority status due to reduction in force. force If there is not a priority applicant from the same agency in the applicant pool, an offer can be made or to a current state State employee with greater cumulative state service. State service subject to the State Personnel Act.~~

~~(b) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an exempt managerial position, who is removed from an exempt managerial position for reasons other than cause but not because the employee's selection violated G. S. 126-14.2, shall receive a one-time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been made, and accepted, by an employee with priority status due to reduction in force or to a current State employee with greater cumulative State service subject to the State Personnel Act.~~

~~(c) A career State employee with less than 10 years of service who was removed from an exempt managerial position because the employee's selection violated G.S. 126-14.2 shall receive a one-time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent position held prior to placement in the exempt managerial position unless an offer has been made, and accepted, by a person qualified under Paragraph (a) or (b) of this Rule, or to an employee notified of or separated by a reduction in force, or to a current State employee with greater cumulative State service subject to the State Personnel Act.~~

~~(b)(d) As exercised by the employee, this The priority consideration considerations described in Paragraphs (a), (b) and (c) of this Rule shall expire when a formal offer is extended for employment in the position being for which the employee has applied for, regardless of the position's salary grade (or salary grade equivalency) if the employee has notified the agency in writing that the employee wishes to exercise priority consideration.~~

~~(e) A vacant position will not be considered available, for purposes of this Section if, the position is one for which there is a career state employee who under a pre-existing, written arrangement, has been selected by the agency for placement into the position after completion of a structured position specific training program/course.~~

~~(d)(e) If an eligible policy making-exempt employee applies for and accepts a position through the regular, non-priority non-priority selection process, which is at a salary grade (or salary grade equivalency) below that held in his most recent subject position, that person shall retain the one-time priority for higher~~

level positions for the remainder of the ~~twelve month~~ 12-month period.~~(e) If an eligible person accepts employment outside State Government, the one-time priority shall be continued through the one year maximum at the person's request.~~

(f) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), the employee remains subject to the State Personnel Act until 10 working days after the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from the position designated as exempt, the employee has priority consideration to a position at the same salary grade (or salary grade equivalency) as the most recent subject position.

Authority G.S. 126-1.1; 126-5.

25 NCAC 01H .1002 CUMULATIVE STATE SERVICE

~~Cumulative service is the total amount of state service in positions subject to the State Personnel Act. It is not necessary that this service be continuous.~~

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1003 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall inform the employee of the priority consideration to be afforded. To receive the advantage of the statutory priority, an employee must file a completed state application with the employee's agency within 30 days of separation. It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel immediately. If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.

(b) The Agency shall notify the Office of State Personnel when:

- (1) an eligible employee accepts a position that satisfies the priority consideration, or
- (2) an eligible employee separated from a position designated as exempt exercises priority and then refuses an employment offer, or
- (3) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1004 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

The Office of State Personnel shall provide a priority referral system such that priority consideration may be granted.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1005 MANDATORY RIGHT TO A POSITION

(a) A State employee removed from an exempt policymaking position for reasons other than cause with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the

exempt policymaking position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across-the-board legislative increases since placement in the position designated as exempt policymaking. The reassignment must be within a 35-mile radius of the exempt position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.

(b) A State employee removed from an exempt managerial position for reasons other than cause, but not because the employee's selection violated G. S. 126-14.2, with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the exempt managerial position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across-the-board legislative increases since placement in the position designated as exempt managerial. The reassignment must be within a 35-mile radius of the exempt managerial position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.

(c) A State employee removed from an exempt managerial position because the employee's selection violated G.S. 126-14.2 with 10 or more years service shall be placed in a comparable position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent position.

(d) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), the employee remains subject to the State Personnel Act until 10 working days after the employee receives written notification of the exempt status. If the employee is removed from the position designated as exempt, the employee shall be placed in a position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent subject position.

Authority G.S. 126-1.1; 126-5.

SECTION .1100 – VETERAN'S PREFERENCE

25 NCAC 01H .1101 VETERANS' PREFERENCE POLICY STATEMENT

It shall be the policy of the State of North Carolina that, in appreciation for their service to this state and this country in time of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every state department, agency and university. Eligible veterans shall be granted preference in employment with every state agency in accordance with Article 13 of G.S. 126.

Authority G.S. 126-4(4); 128-15.

25 NCAC 01H .1102 CLAIMING VETERAN'S PREFERENCE

In order to claim veteran's preference, all eligible persons ~~shall must complete and sign submit~~ a State Application for Employment (~~PD-107 or its equivalent~~) (~~PD-107~~), and ~~submit it to the appointing authority, upon initial application.~~ Appointing authorities are responsible for ~~reviewing the Military Service portion of the PD-107 and verifying eligibility.~~ ~~Appointing authorities eligibility and~~ may request additional documentation as ~~is~~ reasonably necessary to ascertain eligibility. ~~Also, as a prerequisite to further consideration, eligible~~ Eligible veterans ~~must shall~~ meet the minimum education and experience qualifications, as defined in 25 NCAC .0635, requirements for the ~~position~~ position applied for, and must be capable of performing the duties assigned to the position. In evaluating the qualifications of veterans against minimum education and experience requirements, credit shall be given on a year for year, and month for month basis, for all military service training and experience which bears a reasonable, functional relationship to the knowledge, skills and abilities required in the position applied for.

Authority G.S. 126-4(4); 126-4(10); 128-15.

25 NCAC 01H .1103 ALLEGATION OF DENIAL OF VETERAN'S PREFERENCE

Any claim or allegation that veteran's preference has not been accorded to an eligible veteran ~~must shall~~ be filed with ~~either the Office of State Personnel or the Office of Administrative Hearings, the State Personnel Commission through the established contested case procedures of the Office of Administrative Hearings.~~ Such claims ~~must shall~~ be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to ~~G.S. 150B-2(2) and~~ G.S. 150B, Article 3. The State Personnel ~~Commission, Commission~~ may, upon a finding that veteran's preference was denied in violation of these rules, order the hiring or reinstatement of any affected person, as well as any other remedy necessary to correct the violation.

Authority G.S. 126-4(10); 126-4(11); 126-37; 126-34.1(b)(4); 126-38; 150B-2(2); 150B, Article 3.

25 NCAC 01H .1104 APPLICATION OF THE VETERAN'S PREFERENCE

- (a) The preference to be accorded eligible veterans shall apply in initial selection and reduction in force situations only.
- (b) In initial selection procedures, where numerically scored examinations are used in determining the relative ranking of candidates, ~~ten~~ 10 points shall be awarded to eligible veterans.
- (c) In initial selection, where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service.
- (d) The amount of additional experience credit to be granted for unrelated military service in individual cases shall be determined as follows. First, determine the amount of related military

service possessed by the eligible veteran beyond that required to meet the minimum qualifications. If the total of such experience equals or exceeds four years, the additional credit for unrelated military service does not apply. If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service ~~he/she may possess~~ in an amount not to exceed the difference between ~~his/her~~ the eligible veteran's related military service and the ~~four year~~ four-year maximum ~~credit which~~ credit that may be granted.

Example A: ~~An eligible veteran with two years of related military experience beyond that necessary to qualify under the minimum education and experience requirement for the vacancy applied for, and with six years of unrelated service, will receive a two year experience credit. For selection consideration, this person will be considered to have a total of four years of related experience. [Four yrs. (maximum possible unrelated service credit) less two yrs. (related military service held by the applicant beyond that necessary for minimum qualification) equals two yrs. (amount of the six years unrelated service which can be credited)].~~

Example B: ~~An eligible veteran has only enough related military service to qualify for the minimum education and experience requirement of the vacancy being applied for, but has two years, three months of unrelated military service. This person will receive a two year, three month experience credit. [Four yrs. (maximum possible unrelated service credit) less zero (related military service held by the applicant beyond that necessary for minimum qualification) equals four yrs. (four yrs. could be credited for unrelated service time; however, the person in this instance can only claim two yrs., three mos., the actual amount of unrelated time served)].~~

(e) After applying the preference, the qualified veteran shall be hired when ~~his/her~~ the veteran's overall qualifications are substantially equal to ~~one or more the~~ non-veterans in the applicant ~~pool~~ pool as provided in 25 NCAC 01H .0701(b). Substantially equal qualifications occur when the ~~employer~~ employing agency cannot make a reasonable determination that the qualifications held by one or more ~~persons~~ applicants are significantly better suited for the position than the qualifications held by another ~~person~~ applicant.

(f) In ~~reduction in force~~ reduction-in-force situations, situations where seniority or years of service is one of the considerations in retention, when calculating length of service, the eligible veteran shall be accorded one year of ~~state~~ State service for each year or fraction thereof of military service, up to a maximum of five years credit.

(g) Spouses of disabled veterans, the surviving spouse or dependent of a veteran who died on active duty during periods of war either directly or indirectly as a result of such service, the spouses of veterans who suffer disabling injuries through service-related reasons during peacetime, and the surviving spouse or dependent of a veteran who died through service-related reasons during peacetime shall be eligible for preference in state employment if the spouse meets the minimum qualifications. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. The preference to be given is that the qualified spouse or dependent shall be hired when the spouse or dependent's

overall qualifications are substantially equal to the non-veterans in the applicant pool.

(h) The spouse, surviving spouse or surviving dependent of that veteran may claim such employment preference as set out in Paragraphs (c) and (d) of this Rule without regard to whether such preference has been claimed previously by the disabled veteran.

Authority G.S. 126-4(4); 126-4(10); 128-15.

SUBCHAPTER 01I - SERVICE TO LOCAL GOVERNMENT

SECTION .2000 - APPOINTMENT AND SEPARATION

25 NCAC 01I .2005 SEPARATION

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status will not be subject to involuntary separation or suspension except for cause or reduction-in-force. The following are types of separation:

- (1) Resignation or Retirement. An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority at least two weeks prior to his last day of work.
- (2) Dismissal. Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of 25 NCAC 1I.2300 Disciplinary Action: Suspension, Dismissal and Appeals.
- (3) Reduction-in-Force. For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their first six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed.

- (4) Voluntary Resignation Without Notice. An employee who is absent from work and does not contact the employer for three consecutive workdays may be separated from employment as a voluntary resignation. Such separations create no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126). A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer.

- (5) Separation Due to Unavailability When Leave is Exhausted. An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints. ~~Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.~~ Prior to separation the employing agency shall meet notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this. Involuntary separation pursuant to this policy may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful. ~~unavailable and that the agency considered the employee's~~

~~proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations.~~ Agencies shall make efforts to place an employee so separated pursuant to this Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights.

However, there is no mandatory requirement placed on an agency to secure an employee, separated under this Rule, a position in any agency.

Authority G.S. 126-4.

RULES REVIEW COMMISSION

This Section contains information for the meetings of the Rules Review Commission on Thursday June 29, 2006, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Lee Settle
Vacant
John Tart

RULES REVIEW COMMISSION MEETING DATES

August 17, 2006 September 21, 2006
October 19, 2006 November 16, 2006

**RULES REVIEW COMMISSION
JUNE 29, 2006
MINUTES**

The Rules Review Commission met on Thursday, June 29, 2006, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell; Jim Funderburk, Jeffrey Gray, Jennie Hayman; Thomas Hilliard; Robert Saunders; Lee Settle, John Tart and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Linda Dupree	DENR
David Taylor	DENR
Belinda Loftin	DENR
Connie Pixley	DENR
Rich Carpenter	DENR
Mack Paul	Attorney/Kennedy Covington
Dana Sholes	OAH
Julie Edwards	OAH
Felicia Williams	OAH
David Sullivan	NC Community College System
Karl Shaffer	NCBLSS
Erin Gould	Department of Labor
Jack Given	Department of Labor
Ellie Sprenkel	Department of Insurance
Bob Potter	Department of Insurance
Ted Hamby	Department of Insurance
Jean Creech	Synagro
Thomas Allen	DENR/DAQ
Joan Troy	Wildlife Resources Commission
Barbara Knopp	Board of Nursing
Bruce Thompson	Attorney/Parker Poe
Henry Jones	Attorney/Jordan, Price, Wall, Gray, Jones & Carlton PLLC
Ed Strickland	Department of Revenue

Nancy Pate	DENR
Ed Norman	DENR
Dennis Ramsey	DENR/DWQ

APPROVAL OF MINUTES

The meeting was called to order at 10:09 a.m. with Chairman Hayman presiding.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the May 18, and June 15, 2006 meetings. The minutes were approved as written.

FOLLOW-UP MATTERS

21 NCAC 2 .0208; .0209; .0302: Board of Architecture – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 14J .0502: Cosmetic Art Examiners – The Commission did not receive any response from the agency therefore no action was taken.

21 NCAC 14P .0105: Cosmetic Art Examiners – The Commission did not receive any response from the agency therefore no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

Commissioner Twiddy did not participate in either the discussion or vote concerning rules from the Department of Insurance.

15A NCAC 2T .0119: Environmental Management Commission – This rule was withdrawn at the request of the agency.

15A NCAC 2T .0305: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b), no authority is cited for the Environmental Management Commission to interpret G.S. 89C. The North Carolina State Board of Examiners for Engineers and Surveyors is responsible for determining what activities are subject to that chapter. No authority is cited for the Environmental Management Commission to set occupational requirements for who can prepare documents. In (h) (1) (D), it is not clear what would constitute “natural conditions of unusual severity”. In (h) (4), it is not clear who access is to be restricted to. In (j) (1), there is no authority cited to set occupational requirements for who can certify inputs for computer modeling.

15A NCAC 2T .0504: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (b), there is no authority cited for the Environmental Management Commission to interpret G.S. 89F and determine what is the practice of soil science. There is no authority cited for the Commission to set occupational requirements for who can prepare soil evaluations. In (c), there is no authority cited for the Environmental Management Commission to interpret G.S. 89C. There is no authority cited for the Commission to set occupational requirements for who can prepare design documents. In (d), there is no authority cited for the Commission to set occupational requirements for who provides location information on boundaries. In (e), there is no authority cited for the Commission to set occupational requirements for who can prepare a hydrogeologic description.

15A NCAC 2T .0604: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (b), there is no authority cited for the Environmental Management Commission to interpret G.S. 89F and determine what is the practice of soil science. There is no authority cited for the Commission to set occupational requirements for who can prepare soil evaluations. In (c), there is no authority cited for the Environmental Management Commission to interpret G.S. 89C. There is no authority cited for the Commission to set occupational requirements for who can prepare design documents. In (d), there is no authority cited for the Commission to set occupational requirements for who provides location information on boundaries.

15A NCAC 2T .0704: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (b), there is no authority cited for the Environmental Management Commission to interpret G.S. 89F and determine what is the practice of soil science. There is no authority cited for the Commission to set occupational requirements for who can prepare soil evaluations. In (c), there is no authority cited for the Environmental Management Commission to interpret G.S. 89C. There is no authority cited for the Commission to set occupational requirements for who can prepare design documents. In (d), there is no authority cited for the Commission to set occupational requirements for who provides location information on boundaries. In (e), there is no authority cited for the Commission to set occupational requirements for who can prepare a hydrogeologic description.

15A NCAC 2T .0904: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (b), there is no authority cited for the Environmental Management Commission to interpret G.S. 89F and determine what is the practice of soil science. There is no authority cited for the Commission to set occupational requirements for who can prepare soil evaluations. In (c), there is no authority cited for the Environmental Management Commission to interpret G.S. 89C. There is no authority cited for the Commission to set occupational requirements for who can prepare design documents. In (d), there is no authority cited for the Commission to set occupational requirements for who provides location information on boundaries.

15A NCAC 2T .0905: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (b), there is no authority cited for the Environmental Management Commission to interpret G.S. 89F and determine what is the practice of soil science. There is no authority cited for the Commission to set occupational requirements for who can prepare soil evaluations. In (c), there is no authority cited for the Environmental Management Commission to interpret G.S. 89C. There is no authority cited for the Commission to set occupational requirements for who can prepare design documents. In (d), there is no authority cited for the Commission to set occupational requirements for who provides location information on boundaries. In (e), there is no authority cited for the Commission to set occupational requirements for who can prepare a hydrogeologic description.

15A NCAC 2T .1004: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the agency to set occupational requirements in (b) and (c), or to interpret G.S. 89C.

15A NCAC 2T .1104: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority cited for the agency to set occupational requirements in (a) (1), (a) (2), (c) (2), (c) (3), (d) (1), (d) (2), (d) (3), (d) (4), (d) (6), (e) (1), (e) (2), (e) (3), and (e) (4). There is also no authority cited for this agency to interpret G.S. 89C or G.S. 89F. In addition, in (c) (3) and (d) (6), it is not clear who would qualify as an agronomist.

15A NCAC 2T .1204: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (d)(1), there is no authority cited for EMC to set occupational requirements for who can provide location information to the Division. There is also no authority cited for EMC to interpret G.S. 89C.

15A NCAC 2T .1504: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (a) (3), there is no authority cited for EMC to set occupational qualifications or to interpret G.S. 89C. In (c) (1) and (d) (1), there is no authority cited for EMC to set occupational qualifications or to interpret G.S. 89F.

15A NCAC 2T .1604: Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for EMC to set occupational requirements as the rule does in (b), (c), (e) and (f).

15A NCAC 2T .1102; .1108; .1109: Environmental Management Commission – The Commission heard speakers Jean Creech, and Mack Paul speak in opposition of the rules. The Commission approved these rules with Commissioners Bell, Gray and Tart opposed.

15A NCAC 18A .2831: Commission for Health Services – The Commission objected to the rule due to ambiguity. It is not clear in (d), line 26, whether the meaning of “permitted under the US EPA Supplemental Guidance” means generally permitted or permitted for a specific use. As an example, would CCA treated wood that is permitted for bulkhead or water contact use be acceptable if it were used for any other purpose on a playground? Even if it is not permitted under this rule, is that clear from the use of the term “permitted” or does there need to be some more specific limiting language? By way of analogy: In the U.S. it is usually permitted for a doctor to use a drug to treat some disease or condition as long as it has been approved by the FDA for any specific disease or condition. A drug approved as a cancer drug can be used to treat any other condition, even though it has not necessarily been shown to be effective in treating that condition. So, if CCA wood is permitted for one use on a playground, does this rule intend to allow its use for any purpose on that playground? One would assume that the answer is a negative one, but that is not clear. It is unclear what constitutes “an oil-based, semi transparent stain sealant” It is unclear in lines 29 and 31 – 32 whether the agency intends to restrict the application to a combination stain/sealant (if there is such a product) or allow both stains and sealants. It is also not clear whether there is actually intended to be a limit on the stain or sealant as to its transparency. Is there an intention to limit these materials to semi-transparent ones and not allow clear (or mostly clear) or solid stains or sealers? It is not clear whether the requirements in (d), lines 27 – 34, to both periodically seal the treated wood and remove the soil under the wood are both intended. In (d), lines 30 and 31, it is not clear what the requirement actually is. The rule requires, initially, that “soil under such equipment and structures ... be removed and replaced with similar material.” Then it adds another condition or requirement, that this material be “covered with 4 to 6 inches of soil, gravel, sand, sod or other vegetation.” It is unclear if the soil and material is replaced, whether the rule actually intends to require that the replaced material then be covered by more material, or does it intend to require that the removed material actually be replaced by, rather than covered by, “4 to 6 inches of ... [material].”? Bruce Thompson and Henry Jones spoke in opposition of the rule.

21 NCAC 32M .0106: Medical Board – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the Medical Board to charge any additional fee for a “nurse practitioner who fails to register as required by this section.”

23 NCAC 3A .0113: Board of Community Colleges – The Commission objected to the rule due to lack of statutory authority. There is no authority cited that allows the agency to specify how much and over what period of time that a school must refund part or all of the tuition of someone who withdraws from school. The authority cited, at G.S. 115D-90(b)(7)i, does allow the agency to make rules concerning and does require “the school bulletin [to] contain the following information: ... i. policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.” A law requiring disclosure and allowing the agency to enact rules concerning disclosure, is not the same as allowing the Board to specify what the minimum provisions of those policies must be.

Chairman Hayman had to leave the meeting so she asked Mr. Funderburk to chair the remainder of the meeting.

12 NCAC 11 .0201: Alarm Systems Licensing Board – The Commission approved this rule contingent on receiving a technical change by the end of the business day. The technical change was not received.

21 NCAC 36 .0403: Board of Nursing – The Commission objected to the rule due to lack of statutory authority. In (d) the rule limits the role of medication aides to aides who have met certain qualifications. The first qualification in (d)(1), is that the aide have a high school diploma or GED. It is not clear who, or even whether anyone, has the authority to set this education qualification for medication aides. The authority cited by the Board in its history note does not seem to confer that authority on the Board of Nursing. G.S. 131E-114.2 gives the Medical Care Commission the authority to set “training” requirements, but that is not the same as establishing the initial qualifications to become a medication aide. Unless the Board of Nursing has specific authority to set such a qualification, then it may not impose that requirement.

21 NCAC 36 .0406: Board of Nursing – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c) it is not clear whether the requirement to have a high school diploma or GED applies to the person seeking to enter the training program or one who seeks to operate a medication aide training program. But regardless of who the rule applies to, as in the previous rule there does not appear to be sufficient authority cited to require a high school diploma or GED to either apply for admission to a medication aide training program or operate one.

21 NCAC 53 .0402: Board of Licensed Professional Counselors – The Commission objected to the rule due to lack of necessity. This rule adds nothing to the authority already given to the Board in its enabling statutes and the Administrative Procedure Act. The rule is therefore unnecessary.

25 NCAC 1D .0115: State Personnel Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. It is not clear what standards the State Personnel Commission will use in approving supplemental salary or changes in the amount of supplemental salary. There is no authority cited for setting them outside of rulemaking. Commissioner Saunders did not participate in either the discussion or vote concerning rules from the State Personnel Commission.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission discussed no new business.

The meeting adjourned at 1:00 p.m.

The next scheduled meeting of the Commission is Thursday, August 17, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
June 29, 2006 Meeting**

PLANT CONSERVATION BOARD

<u>Endangered Plant Species List</u>	02	NCAC	48F	.0301
<u>Threatened Plant Species List</u>	02	NCAC	48F	.0302

INSURANCE, DEPARTMENT OF

<u>Filing Approval Life Accident and Health Forms</u>	11	NCAC	12	.0307
<u>Submission Requirements Form and Rate Filings</u>	11	NCAC	12	.0329
<u>Notice of a Closed Block of Individual Business</u>	11	NCAC	12	.0330
<u>Minimum Loss Ratio Standards</u>	11	NCAC	16	.0201
<u>Common Block</u>	11	NCAC	16	.0207
<u>Annual Actuarial Certifications for Long-Term Care Forms</u>	11	NCAC	16	.0208
<u>Scope and Definitions</u>	11	NCAC	20	.0101
<u>Written Contracts</u>	11	NCAC	20	.0201
<u>Filing Requirements</u>	11	NCAC	20	.0205

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Specialized Firearms Instructor Training</u>	12	NCAC	09B	.0226
<u>Specialized Driver Instructor Training</u>	12	NCAC	09B	.0227
<u>Specialized Subject Control Arrest Techniques</u>	12	NCAC	09B	.0232
<u>Specialized Physical Fitness Instructor Training</u>	12	NCAC	09B	.0233
<u>Terms and Conditions of General Instructor</u>	12	NCAC	09B	.0303
<u>Specialized Instructor Certification</u>	12	NCAC	09B	.0304
<u>Instructor Certification Renewal</u>	12	NCAC	09B	.0312
<u>Terms and Conditions of General Instructor Certification</u>	12	NCAC	09G	.0309
<u>Instructor Certification</u>	12	NCAC	09G	.0312

LABOR, DEPARTMENT OF

<u>Definitions</u>	13	NCAC	13	.0101
<u>Controlling Definitions</u>	13	NCAC	13	.0102
<u>Incorporated Standards</u>	13	NCAC	13	.0103
<u>Name Address</u>	13	NCAC	13	.0201
<u>Inspector Qualifications</u>	13	NCAC	13	.0202
<u>North Carolina Commission</u>	13	NCAC	13	.0203
<u>Conflict of Interest</u>	13	NCAC	13	.0204
<u>Owner User Inspection Agency</u>	13	NCAC	13	.0205
<u>Owners or Users to Notify Chief Inspector of Accidents</u>	13	NCAC	13	.0206
<u>Inspection Reports</u>	13	NCAC	13	.0207
<u>Insurance Companies to Notify Chief Inspector</u>	13	NCAC	13	.0208
<u>Installers to Notify Chief Inspectors</u>	13	NCAC	13	.0209
<u>Shop Inspections and National Board R Stamp Qualificatio...</u>	13	NCAC	13	.0210
<u>Certificate Inspections</u>	13	NCAC	13	.0211
<u>Preparation for Inspection</u>	13	NCAC	13	.0212
<u>Certificate and Inspection Fees</u>	13	NCAC	13	.0213
<u>Inspection Documentation</u>	13	NCAC	13	.0301
<u>Certificate Issuance</u>	13	NCAC	13	.0302
<u>Inspections Revealing Deficiencies</u>	13	NCAC	13	.0303
<u>Appeals</u>	13	NCAC	13	.0304
<u>Menace To Public Safety Notice</u>	13	NCAC	13	.0305
<u>Violations</u>	13	NCAC	13	.0306

RULES REVIEW COMMISSION

<u>Design and Construction Standards</u>	13	NCAC	13	.0401
<u>North Carolina Stamping and Registration</u>	13	NCAC	13	.0402
<u>Controls and Safety Devices</u>	13	NCAC	13	.0404
<u>Pressure Relief Devices</u>	13	NCAC	13	.0405
<u>High Pressure or Temperature Limit Control</u>	13	NCAC	13	.0406
<u>Pressure Gauges</u>	13	NCAC	13	.0407
<u>Gauge Glasses and Water Columns</u>	13	NCAC	13	.0408
<u>Automatic Low-Water Fuel Cutoff Controls and Water-Feedin...</u>	13	NCAC	13	.0409
<u>Temperature Gauges</u>	13	NCAC	13	.0410
<u>Valves, Drains and Bottom Blowoffs</u>	13	NCAC	13	.0411
<u>Gas-Fired Jacketed Steam Kettle</u>	13	NCAC	13	.0414
<u>Age Limit for Certain Boilers and Pressure</u>	13	NCAC	13	.0415
<u>Reinstallation of Certain Boilers and Pressure</u>	13	NCAC	13	.0416
<u>Air and Ventilation Requirements</u>	13	NCAC	13	.0419
<u>Burner Controls</u>	13	NCAC	13	.0420
<u>North Carolina Special</u>	13	NCAC	13	.0421
<u>Exhibition Boilers</u>	13	NCAC	13	.0422
<u>Model Hobby Boilers</u>	13	NCAC	13	.0423
<u>General Requirements</u>	13	NCAC	13	.0501
<u>Standards</u>	13	NCAC	13	.0701
<u>Inspection During Construction</u>	13	NCAC	13	.0702
<u>Inservice Inspection</u>	13	NCAC	13	.0703
<u>Inspector Qualifications</u>	13	NCAC	13	.0704
<u>Semi-Annual Audit of Nuclear Inspectors</u>	13	NCAC	13	.0705
<u>Construction</u>	13	NCAC	13	.0706
<u>Inspection Certificate</u>	13	NCAC	13	.0801
<u>Application for a North Carolina Commission</u>	13	NCAC	13	.0802
<u>North Carolina Certificate of Competency</u>	13	NCAC	13	.0803
<u>North Carolina Commission</u>	13	NCAC	13	.0804
<u>Owner-User Agency Applications</u>	13	NCAC	13	.0805
<u>Owner-User Inspection Agency Statements</u>	13	NCAC	13	.0806
<u>Inspection Request</u>	13	NCAC	13	.0807
<u>Incident Report</u>	13	NCAC	13	.0808
<u>Inspection Report</u>	13	NCAC	13	.0809
<u>Inspection Service Agreement</u>	13	NCAC	13	.0811
<u>Report of Repair or Alteration</u>	13	NCAC	13	.0812
<u>Audit Report</u>	13	NCAC	13	.0813
<u>Repair Letter Notice of Noncompliance</u>	13	NCAC	13	.0815

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Scope of Delegated Authority</u>	15A	NCAC	01O	.0101
<u>Agents Serving as Contractors</u>	15A	NCAC	01O	.0105

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Yadkin-Pee Dee River Basin</u>	15A	NCAC	02B	.0309
<u>Purpose and Applicability</u>	15A	NCAC	02D	.2401

RULES REVIEW COMMISSION

<u>Definitions</u>	15A	NCAC	02D	.2402
<u>Nitrogen Oxide Emissions</u>	15A	NCAC	02D	.2403
<u>Sulfur Dioxide</u>	15A	NCAC	02D	.2404
<u>Nitrogen Oxide Emissions During Ozone</u>	15A	NCAC	02D	.2405
<u>Permitting</u>	15A	NCAC	02D	.2406
<u>Monitoring Reporting and Recordkeeping</u>	15A	NCAC	02D	.2407
<u>Trading Program and Banking</u>	15A	NCAC	02D	.2408
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<u>Classification of Manufacturing Activities for Privilege Tax</u>	17	NCAC	07D	.0102
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ARCHITECTURE, BOARD OF

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<u>Unprofessional Conduct</u>	21	NCAC	02	.0209
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CHIROPRACTIC EXAMINERS, BOARD OF

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COSMETIC ART EXAMINERS, BOARD OF

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NURSING, BOARD OF

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LICENSED PROFESSIONAL COUNSELORS, BOARD OF

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AGENDA
RULES REVIEW COMMISSION
August 17, 2006, 10:00 A.M.

- I. Reminder of Governor's Executive Order #1
- II. Review of minutes of last meeting
- III. Follow-Up Matters
 - A. Environmental Management Commission – 15A NCAC 2T .0305; .0504; .0604; .0704; .0904; .0905; .1004; .1104; .1204; .1504; .1604 (Bryan)
 - B. Commission for Health Services – 15A NCAC 18A .2831 (DeLuca)
 - C. Cosmetic Art Examiners – 21 NCAC 14J .0502 (DeLuca)
 - D. Cosmetic Art Examiners – 21 NCAC 14P .0105 (Bryan)
 - E. Medical Board – 21 NCAC 32M .0106 (DeLuca)
 - F. Board of Nursing – 21 NCAC 36 .0403; .0406 (DeLuca)
 - G. Board of Licensed Professional Counselors – 21 NCAC 53 .0402 (Bryan)
 - H. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
 - I. State Personnel Commission – 25 NCAC 1D .0115 (Bryan)
- IV. Review of Rules (Log Report)
- V. Commission Business
- VI. Next meeting: September 21, 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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>CRIME VICTIMS COMPENSATION</u>				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>HEALTH AND HUMAN SERVICES</u>				
Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
Patricia Filyaw's FCCH vs. Div. of Child Development	05 DHR 0803	Gray	05/30/06	
Shari Ann Torain v. DHHS	05 DHR 1317	Elkins	06/08/06	
County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 st Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A.	05 DHR 1369	Gray	05/26/06	21:01 NCR
Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities	05 DHR 1427	Chess	05/17/06	
Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical , Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1490	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1491	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1492	Lassiter	05/31/06	
Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1506	Lassiter	05/31/06	
Bertha Graham v. DHHS, DFS, Health Care Personnel Registry	05 DHR 2040	McCotter	06/08/06	
Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section	05 DHR 2225	Lassiter	05/10/06	
Richard Wayne Baird v. DHHS, DMA	06 DHR 0177	Gray	06/15/06	
Jansala Walker v. Healthcare Personnel Registry	06 DHR 0213	Wade	06/07/06	
Linwood B. Cameron d/b/a New Millennium Management Services v. DFS	06 DHR 0218	Elkins	06/08/06	
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0271	Gray	05/17/06	
Myrna Diane Bunns v. DHHS, Division of Child Development	06 DHR 0399	Gray	06/19/06	
Annette Alexander v. DHHS	06 DHR 0471	Elkins	06/23/06	
Bernice Norman v. Wash Co. Dept. of Social Services	06 DHR 0472	Elkins	06/23/06	
Delisa Jean Scott v. DHHS, DFS	06 DHR 0475	Elkins	06/23/06	
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0488	Gray	05/17/06	
Eric Becton v. DHHS	06 DHR 0594	Elkins	06/23/06	
Regina A McLean v. DHHS, Citizen Affairs/Administration	06 DHR 0691	Gray	06/27/06	

CONTESTED CASE DECISIONS

DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect	06 DHR 0720	Lassiter	06/14/06	
Denise Little v. Catawba County LME, John Hardy, Director	06 DHR 0860	Lassiter	06/23/06	
Consultant Deanna Hoxworth				
Edna Cray - Kid's Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program	06 DHR 0887	Gray	06/13/06	
<u>DEPARTMENT OF ADMINISTRATION</u>				
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<u>DEPARTMENT OF CORRECTIONS</u>				
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Steven Forrest Brubaker v. NC Criminal Justice Education and Training Standards Commission	05 DOJ 1405	Elkins	05/31/06	21:01 NCR
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<u>ENVIRONMENT AND NATURAL RESOURCES</u>				
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Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS	02 OSP 1036	Gray	06/15/06	
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Deena Ward v. Columbus Co. Dept. of Social Services	05 OSP 1017	Lassiter	06/23/06	
Thomas H. Jones v. NC State Highway Patrol, Dept. of Crime Control & Public Safety	05 OSP 1495	Chess	05/17/06	
Michael D. Bognanowicz v. NC Wildlife Resources Commission	05 OSP 2024	Bryan	05/18/06	
Kamaria Smith v. DHHS	06 OSP 0130	Mann	06/06/06	
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	
Reginald Powe v. Public Schools of NC State Board of Education, Dept of Public Instruction	06 OSP 0238	Lassiter	05/09/06	
Lisa Green v. DOC	06 OSP 0379	Lassiter	06/02/06	
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<u>UNC HOSPITALS</u>				
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