

NORTH CAROLINA REGISTER

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November 1, 2006

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
Capehart-Crocker House (919) 733-2678
424 North Blount Street (919) 733-3462 FAX
Raleigh, North Carolina 27601-2817

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Felicia Williams, Editorial Assistant felicia.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159 (919) 733-2721
Raleigh, North Carolina 27605 (919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Director Counsel joe.deluca@ncmail.net
Bobby Bryan, Staff Attorney bobby.bryan@ncmail.net
Lisa Johnson, Administrative Assistant lisa.johnson@ncmail.net

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 733-7061
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: Nathan Knuffman nathan.knuffman@ncmail.net

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street (919) 733-5811
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@nclm.org

NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

EXECUTIVE ORDER NO. 108

**TO DECLARE BY PROCLAMATION THE TRUE BOUNDARY LINE BETWEEN THE STATE OF NORTH CAROLINA
AND THE STATE OF SOUTH CAROLINA
ALONG THE COUNTIES OF JACKSON AND TRANSYLVANIA**

WHEREAS, the Joint North Carolina/South Carolina Boundary Commission determined at its duly-convened meeting on December 11, 1997, to establish the true boundary line between the states along the North Carolina county of Jackson and a portion of the county of Transylvania; and

WHEREAS, both states have undertaken the necessary steps to locate, survey, and mark the 19.3-mile segment of the boundary, as identified through historical research and field work and by using the Global Positioning System ("GPS"); and

WHEREAS, pursuant to N.C.G.S. § 141-5, the completion of the survey of the above-described boundary has been reported to the undersigned Governor Michael F. Easley and placed before and approved by the Council of State on July 11, 2006; and

WHEREAS, N.C.G.S. § 141-5 further requires that the Governor issue a Proclamation declaring the reported and approved survey line to be the true boundary of the State of North Carolina.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

- (1) That, pursuant to the provisions of N.C.G.S. § 141-5, the true boundary line between the State of North Carolina and the State of South Carolina along the county of Jackson and a portion of the county of Transylvania is hereby declared, by PROCLAMATION, to be the surveyed line represented on the attached plat of the completed survey captioned as North Carolina/South Carolina State Boundary from Indian Camp Boundary to the Chattooga River, dated May 2005, and which is described by a monument located at Latitude 35° 05' 07.96294" North, Longitude 082° 47' 01 .49862" West (North American Datum 1983-86 "NAD 83-86"), and marked by the "●" inside a triangle on a brass disk stamped with "BLACKBURN, 1996, NORTH CAROLINA, SOUTH CAROLINA, STATE BOUNDARY LINE" and set in a concrete monument; thence from said point following a geodetic line to a monument located at Latitude 35° 00' 04.88130" North and Longitude 083° 06' 30.84455" West, NAD 83-86, marked by the "†" in the inscription "LAT 35, AD 1813, NC † SC" chiseled on Commissioners' Rock on the east bank of the Chattooga River; thence following a geodetic line with a geodetic azimuth of 270 degrees to the centerline of the Chattooga River.
- (2) That the North Carolina Geodetic Survey of the Department of Environment and Natural Resources, and the North Carolina State Property Office of the Department of Administration continue to retain and manage sufficient and necessary records of the state boundary marking and re-markings, including but not limited to this Executive Order.

This Executive Order shall take effect immediately and remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of September in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 109
PROCLAMATION OF STATE OF DISASTER
FOR JONES COUNTY AND DUPLIN COUNTY**

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§166A-4 and 14-288.1(10), exists in the State of North Carolina, specifically Jones County and Duplin County as a result of the damage done by Tropical Storm Ernesto on August 31, 2006, through September 3, 2006;

WHEREAS, on August 31, 2006, Jones County proclaimed a local State of Emergency;

WHEREAS, on September 18, 2006, Duplin County proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria of a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Jones County and Duplin County declared a local state of emergency pursuant to N.C.G.S. §166A-8 and N.C.G.S. §§14-288.12, 14-288.13, and 14-288.14, and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or meets or exceeds the State infrastructure criteria set out in N.C.G.S. §166A-6.01(b)(2)a; and, (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and **NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Pursuant to N.C.G.S. §§166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for Jones County and Duplin County.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced counties.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer of the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster and state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for Jones County and Duplin County, issued on October 10, 2006, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this tenth day of October in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *NC Plumbing, Fire and Building Codes.*

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

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

Public Hearing: *December 11, 2006, 1:00PM, Hilton North Raleigh, 3415 Wake Forest Road, Raleigh, NC 27609.*

Comment Procedures: *Written comments may be sent to Chris Noles, Interim Secretary, NC Building Code Council, c/o NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comment period expires on January 1, 2007.*

Statement of Subject Matter:

1. (060912 Item B-2) Request by John Hitch, NCBCC, to amend the 2006 NC Building and Fire Codes, Section 903.2.1.2, condition 2 from "100" to "300" occupants.

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet (464.5 m²).
2. The fire area has an occupant load of ~~400~~ 300 or more.
3. The fire area is located on a floor other than the level of exit discharge.

2. (060912 Item B-4) Request by Wallace Cole, Winston-Salem to delete the requirement for sloping the shower liner from the 2006 NC Plumbing Code.

417.5.2 Shower lining. Floors under shower compartments, except where prefabricated receptors have been provided, shall be lined and made water tight utilizing material complying with Sections 417.5.2.1 through 417.5.2.4. Such liners shall turn up on all sides at least 2 inches (51 mm) above the finished threshold level. Liners shall be recessed and fastened to an approved backing so as not to occupy the space required for wall covering, and shall not be nailed or perforated at any point less than 1 inch (25.4 mm) above the finished threshold. Liners shall be ~~pitched one fourth unit vertical in 12 units horizontal (2 percent slope) and shall be sloped toward the fixture drains and be~~ securely fastened to the waste outlet at the seepage entrance, making a water-tight joint between the liner and the outlet.

Exception: Floor surfaces under shower heads provided for rinsing laid directly on the ground are not required to comply with this section.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
 Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Kirby Building, 2501 Mail Service Center, Raleigh, NC 27699-2501, fax (919) 733-6608

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services- Division of Medical Assistance intends to adopt the rule cited as 10A NCAC 21B .0314.

Comment period ends: January 1, 2007

Proposed Effective Date: March 1, 2007

Public Hearing:

Date: November 16, 2006

Time: 10:30 a.m.

Location: 1985 Umstead Drive, Raleigh, NC 27603, Kirby Building, Room 132

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.

Reason for Proposed Action: This rule is required by Section 10.5(b) of S.L. 2006-66 (eff.7/1/06), which provides: "The Department of Health and Human Services shall provide for a hardship waiver process in accordance with 42 U.S.C. 1396p(c)(2)(D)". Time is of the essence because the waiver process required under 42 U.S.C. 1396p(c)(2)(D) is a necessary prerequisite for the Department's implementation of changes to federal transfer of asset laws that became effective February 8, 2006 with the passage of the Deficit Reduction Act. Individuals who transfer assets for less than fair market value in order to become eligible for medical assistance for long term care services are subject to a transfer of assets penalty. The penalty will result in the individual being denied or terminated from medical assistance for long term care services for a certain length of time, depending on the fair market value of the transferred assets. The transfer of asset penalties are imposed pursuant to federal and state authority under 42 U.S.C. 1396p(c) and G.S. 108A-58.1. The rule sets forth the right of the individual to receive notice of the right to request a waiver due to undue hardship, the application procedures and time lines, and conditions that must be met to satisfactorily demonstrate that an undue hardship exists for the individual.

Fiscal Impact:

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

CHAPTER 21 - MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 21B – ELIGIBILITY DETERMINATION

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

10A NCAC 21B .0314 WAIVER OF TRANSFER OF ASSETS PENALTY DUE TO UNDUE HARDSHIP

(a) An individual who incurs a penalty for transfer of assets by being denied or terminated from Medicaid payment of long term care services under the provisions of 42 U.S.C. 1396p shall have that penalty waived if the Director of the county department of social services or the Director's designee determines that the imposition of the penalty would result in an undue hardship to the individual.

(b) When it is determined that an individual is to be penalized for a transfer of assets, the county department of social services shall notify the individual in accordance with G.S. 108A-79. The notice shall include the individual's right to apply to the county department of social services for a waiver of the penalty if the imposition of the penalty would result in an undue hardship to the individual.

Procedure by which a person can object to the agency on a proposed rule: Should you desire to object to a proposed rule(s) please respond to DMA with the objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains. This must be submitted in writing to Teresa Smith, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 or 2501 Mail Service Center, Kirby Building.

Comments may be submitted to: Teresa Smith, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603,

(c) The individual or the individual's personal representative shall have 12 calendar days from the date of the notice required under Paragraph (b) of this Rule to file an application for an undue hardship waiver. The application may be made verbally or in writing. The application shall be documented in the individual's record either by the individual's written request including the date received or if the application is made verbally, the receipt of the application shall be documented and dated in the individual's record. As required by 42 U.S.C. 1396p(c)(2)(D), the facility in which an institutionalized individual is residing may file an undue hardship application on behalf of the institutionalized individual with the consent of the individual or the personal representative of the individual. A facility applying for a waiver for an individual residing in the facility shall adhere to the requirements of this Rule.

(d) Upon receipt of the application for a waiver of the transfer of assets penalty specified in Paragraph (c) of this Rule, the county department of social services shall notify the individual in writing of the information and documentation necessary to determine if the requirements for approving the undue hardship waiver are met. The individual shall have 12 calendar days from the date of the notice specified in this Paragraph to provide the necessary information and documentation to establish the undue hardship. Prior to the expiration of the initial 12 calendar day period, the individual may request an additional 12 calendar days to provide the information and documentation. The request shall be documented in the individual's record either by the individual's written request including the date received or if the request is made verbally, the receipt of the request shall be documented and dated in the individual's record. The county department of social services shall grant the request, and the additional 12 calendar days shall commence on the day following the last day of the first 12 calendar day period.

(1) If at the end of the time allowed, the individual fails to provide the necessary information and documentation, the county department of social services shall deny the application for waiver of the penalty for undue hardship and notify the individual of the denial pursuant to G.S. 108A-79.

(2) If the necessary information and documentation is provided within the time allowed, the county department of social services shall notify the individual in 12 calendar days of its determination of whether the imposition of the penalty would result in an undue hardship to the individual.

(e) Except as provided for in Paragraph (f) of this Rule undue hardship shall exist only if the individual provides the information and documentation necessary to demonstrate to the satisfaction of the Director of the county department of social services or the Director's designee that all of the following conditions are met:

(1) The application of the penalty would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life without which the

individual's health or life would be endangered;

(2) No alternative sources are available to the individual to provide the medical care or food, clothing, shelter or other necessities of life that the individual would be deprived of due to the imposition of the penalty;

(3) The individual, the individual's spouse or representative, or the person who transferred the asset, including any person who had responsibility for the individual's financial affairs has made a good faith effort to pursue all reasonable means to recover the transferred resource or the fair market value of the transferred asset, including:

(A) Seeking the advice of an attorney and pursuing any available legal or equitable remedies such as asset freezing, assignment, or injunction;

(B) Seeking modification, avoidance or nullification of a financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement or instrument; and

(C) Cooperating with any attempt to recover the transferred resource or the fair market value of the transferred resource.

(4) For purposes of this Paragraph the following definitions shall apply:

(A) "Health or life would be endangered" means: a medical doctor with knowledge of the individual's medical condition at the time of the application of the penalty period, certifies in writing that in his or her professional opinion, the individual will be in substantial danger of death or the individual's health will suffer substantial and irreparable harm.

(B) "Other necessities of life" means: basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual's health or life would be endangered.

(f) An undue hardship shall not exist when:

(1) The application of a transfer of assets penalty merely causes the individual an inconvenience or restricts his or her lifestyle;

(2) The institutionalized spouse has transferred his or her assets to the community spouse and the community spouse refuses to cooperate in making the assets available to the institutionalized spouse; or

(3) The individual's total available income and resources (or if a couple, the total combined available income and resources of the

individual and the individual's spouse, or if under age 18, the combined available resources and income of the individual and the individual's parents), including all countable and excluded income and resources, are sufficient to provide the individual medical care, food, clothing, shelter, and other necessities of life such that the individual's health or life would not be endangered as defined in Subparagraph (e)(4) of this Rule.

(g) If the Director of the county department of social services or the Director's designee determines that:

- (1) An undue hardship exists, the county department of social services shall waive the penalty beginning with the month of the application for the waiver or the month in which all requirements in Paragraph (e) of this Rule are met whichever is later and notify the individual of approval of the waiver of the penalty pursuant to G.S. 108A-79.
- (2) An undue hardship does not exist, the county department of social services shall deny the request for the waiver of the penalty and notify the individual of denial of the waiver request pursuant to G.S. 108A-79.
- (3) An undue hardship would exist except that the individual has sufficient available income and resources as provided in Subparagraph (f)(3) of this Rule for a portion of the penalty period, the county department of social services shall grant the waiver only for the portion of the penalty period for which there are not sufficient resources and income.

(h) During a penalty period or any portion of a penalty period that has been waived because of undue hardship, acquisition by the individual, individual's spouse, or the parent or parents of an individual under age 18, of new or increased income or resources shall be treated as a change in situation and evaluated under the rules of this Chapter.

(i) While the undue hardship application is pending, Medicaid shall not make payments for nursing facility services to hold a bed for the individual, as described in 42 U.S.C. 1396p(c)(2)(D).

Authority G.S. 108A-54; 108A-58.1; P.L. 109-171; 42 U.S.C. 1396p.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 10A NCAC 43D .0202 and .0706.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: November 27, 2006

Time: 1:30 p.m. – 3:30 p.m.

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

Reason for Proposed Action: *The proposed rule amendments are required to comply with the Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265 and the subsequent interim rule published by Food and Nutrition Services (FNS) of the US Department of Agriculture in the Federal Register on November 29, 2005. The intent of these amendments is to implement specific cost containment strategies to maximize the number of women, infants, and children served with available federal funding.*

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 or in writing at the public hearing for these rule amendments.*

Comments may be submitted to: *Chris G. Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915, email chris.hoke@ncmail.net*

Comment period ends: January 1, 2007

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 43D - WIC/NUTRITION

SECTION .0200 - WIC PROGRAM GENERAL INFORMATION

10A NCAC 43D .0202 DEFINITIONS

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

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this

- Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to making a formal appeal in accordance with G.S. 150B.
- (6) A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (9) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
- (11) A "predominantly WIC vendor" is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food instruments.
- ~~(11)~~(12) "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.
- ~~(12)~~(13) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- ~~(13)~~(14) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- ~~(14)~~(15) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- ~~(15)~~(16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
- ~~(16)~~(17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- ~~(17)~~(18) "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
- ~~(18)~~(19) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- ~~(19)~~(20) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- ~~(20)~~(21) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- ~~(21)~~(22) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- ~~(22)~~(23) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, ~~1330 St. Mary's Street~~, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

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

(1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

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

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

(2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.

- Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;
- Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;
- Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and
- Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

(3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, predominantly WIC vendors, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

- Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one ~~agreement~~ agreement), ~~and military commissaries; commissaries, and~~ predominantly WIC vendors; and
- Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

(4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.

(5) If a vendor applicant has at least 30% ownership in the applying store and at least 30% ownership in a store(s) already authorized, the applying store shall be placed in the peer group of the highest designation of the already authorized stores(s). Upon reauthorization of the WIC Vendor Agreement, all stores held under common ownership shall be placed in the highest peer group among those held commonly. Common ownership is ownership of 30% or more in two or more stores.

(6) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.

(7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

(8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program shall

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

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

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

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical food directly from the above listed sources. Acceptable receipts include company

letterhead or name of wholesaler/manufacturer, date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases;

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

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

(B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the

- state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization;
- (5) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
 - (6) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
 - (7) Mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times;
 - (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
 - (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.;
 - (10) The store shall not use either the acronym "WIC" or the WIC logo, including close facsimiles, in total or part, either in the official name in which the business is registered or in the name under which it does business, if different;
 - (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency;
 - (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business;
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
 - (14) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;
 - (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had

a penalty not been assessed, is continuing.

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply until the time the Food Stamp vendor disqualification otherwise would have expired;

- (16) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

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

- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
- (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that

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

- (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
- (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
- (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
- (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
- (13) Ensure that the food instrument is countersigned in the presence of the cashier;
- (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
- (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting

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- the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;
- (18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- (19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- (20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- (21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- (22) Notify the local WIC agency of misuse (attempted or actual) of the WIC program food instrument(s);
- (23) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

| Food Item | Type of Inventory | Quantities Required |
|----------------------|---|---|
| Milk | Whole fluid: gallon | Total of 6 gallons fluid milk |
| | -and- | |
| | Skim/lowfat fluid: gallon | |
| | Nonfat dry: quart package | Total of 5 quarts when reconstituted |
| | -or- | |
| | Evaporated: 12 oz. can | 5 cans |
| Cheese | 2 varieties in 8 or 16 oz. package | Total of 6 pounds |
| Cereals | 4 types (minimum package size 12 oz.) | Total of 12 packages |
| Eggs | Grade A, large or extra-large: white or brown: one dozen size carton | 6 dozen |
| Juices | Frozen: 11.5-12 oz. container | 10 containers |
| | Single strength: 46 oz. container | 10 containers |
| | Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength. | |
| Dried Peas and Beans | 2 varieties: one pound package | 3 packages |
| or | | |
| Peanut Butter | Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container | 3 containers |

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

- All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk or soy-based infant formula in 32 oz. ready-to-feed or lactose-free infant formula in 32 oz. ready-to-feed or powder within 48 hours of request by the state or local WIC agency;
- (24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (25) Permit the purchase of supplemental food without requiring other purchases;
- (26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- (27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (30) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the

- vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (32) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
- (33) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (34) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (35) Return the authorized WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program;
- (36) Offer WIC customers the same courtesies as offered to other customers;
- (37) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with federal regulations. If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. ~~This applies to authorized vendors for which more than 50% of the annual revenue from the sales of food items comes from WIC transactions.~~ These vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, nor cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors.
- (38) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- (39) Comply with all the requirements for vendor applicants of Subparagraphs (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(7), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide annual vendor training classes on WIC procedures and rules;
 - (2) Monitor the vendor's performance under this agreement to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
 - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
 - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
 - (5) Keep records of the transactions between the parties under this agreement pursuant to 10A NCAC 43D .0206.
- (e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.
- (1) In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.

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

(h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule.

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
 - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
 - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
 - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
 - (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo in accordance with Paragraph (b)(10) of this Rule.
 - (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) offering improper incentives, free merchandise, or services by a predominantly WIC vendor in accordance with Subparagraph (c)(37) of this Rule.
 - (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation

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

- (E) failure to provide store inventory records when requested by WIC staff;
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
 - (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (E) nonpayment of a claim made by the state agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.

(j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the

six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.

- (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.

- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:

- (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
- (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
- (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.

- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.

(m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

(o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.

(p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the

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

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

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 13A .0106.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: December 7, 2006

Time: 10:00 a.m.

Location: The Cardinal Room, 5605 Corner of Six Forks Road and Millbrook Road

Reason for Proposed Action: Previously adopted 40 CFR 261.38 of subpart D is moved to subpart E. A new Subpart E, "Exclusions/Exemptions" – which adds 40 CFR 261.40, and 261.41 to subpart E is adopted by reference to provide conditional exclusions from the federal hazardous waste management standards for Cathode Ray Tubes (CRTs) and CRT glass destined for recycling. The additional provisions will allow an increase to the collection and recycling of CRTs; and reduce the amount of lead in landfills by allowing the lead to be reused to make new CRT glass or be sent to lead smelters.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing by contacting: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Written objections to the proposed text of the Rule published in the North Carolina Register shall be specific. All comments and written exceptions for or against the proposed text of the Rule will be considered.

Comments may be submitted to: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh,

NC 27699-1646, phone (919) 508-8534, fax (919) 715-3605, email Elizabeth.Cannon@ncmail.net.

Comment period ends: January 1, 2007

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 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

SECTION .0100 - HAZARDOUS WASTE

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through ~~261.38~~ 261.37 Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.

~~(f)~~(e) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 10A NCAC 46 .0213, 15A NCAC 18A .2601 and .2604.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: November 21, 2006

Time: 1:00 p.m.

Location: 2728 Capital Boulevard, Room 1a224, Raleigh, NC

Reason for Proposed Action: *To focus inspection time on establishments with greater inherent risk. To resolve critical item violations quickly. To better allocate scarce resources.*

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to object to these rules may do so in writing to Sue Grayson, DENR, EHSS, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739 or email sue.grayson@ncmail.net.*

Comments may be submitted to: *Sue Grayson, DENR/EHSS, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739, email sue.grayson@ncmail.net*

Comment period ends: January 1, 2007

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 46 - LOCAL STANDARDS

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

10A NCAC 46 .0213 FOOD, LODGING/INST SANITATION/PUBLIC SWIMMING POOLS/SPAS

(a) A local health department shall provide food, lodging, and institutional sanitation and public swimming pools and spas services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) The frequency of inspections of food, lodging, and institutional facilities and public swimming pools and spas with the following being the minimum:

| Type of Establishment | Frequency Per Fiscal Year (July 1 – June 30) |
|--|--|
| <u>Adult Day Service Facilities</u> | <u>1/year</u> |
| Bed and breakfast homes | 1/year |
| Bed and breakfast inns | 1/6 months |
| Catered Elderly Nutrition Sites | 1/year |
| Child day-care facilities | 2/year |
| Commissary for Pusheart or Mobile Food Unit | 1/quarter |
| <u>Food Service Establishments</u> | |
| <u>Risk Category I</u> | <u>1/year</u> |
| <u>Risk Category II</u> | <u>1/6months</u> |
| <u>Risk Category III</u> | <u>1/4 months</u> |
| <u>Risk Category IV</u> | <u>1/3 months</u> |
| Institutions | 1/6 months |
| Limited Food Service Establishments | 1/quarter |
| Local confinement facilities | 1/year |
| Lodging | 1/year |
| Meat markets | 1/quarter |
| Migrant housing water and sewage evaluation | 1/year |
| Mobile food units | 1/quarter |
| <u>Primitive Experience Camps</u> | |
| <u>Operating 6 months or less per year</u> | <u>1/year</u> |
| <u>Operating more than 6 months per year</u> | <u>1/6 months</u> |
| Private boarding schools and colleges | 1/year |
| Public swimming pools and spas which operate only between April 1 and October 31 each year | 1/operational season |

Public swimming pools and spas which operate at times other than between April 1 and October 31 each year

| | |
|-----------------------------|----------------------|
| Pushcarts | 1/quarter |
| Residential care facilities | 1/year |
| Restaurants | 1/quarter |
| Schools | 1/year |
| Summer camps | 1/year |
| Tattoo Artists | 1/year |

Risk Category I applies to food service establishments that prepare only non-potentially hazardous foods.

Risk Category II applies to food service establishments whose preparation processes requiring cooking, cooling and reheating are limited to two or less potentially hazardous foods. Potentially hazardous foods that are not cooked, cooled and reheated shall be:

- (A) cooked and served to order;
- (B) hot or cold held for service for six hours or less; or
- (C) prepackaged raw ingredients that are cooked to order.

Risk Category III applies to Food Service Establishments that cook, cool, and reheat no more than three potentially hazardous foods. Advanced preparation of potentially hazardous foods occurs 24 or more hours prior to service.

Risk Category IV applies to Food Service Establishments that prepare potentially hazardous foods from raw ingredients. Preparation processes include cooking, cooling, hot holding and reheating of an unlimited number of potentially hazardous foods 24 or more hours prior to service. This category also includes those facilities using specialized processes or whose primary service is to a highly susceptible population.

~~For the purpose of restaurant inspections, a food sampling inspection shall fulfill the requirement of an inspection provided a minimum of three distinct samples are taken from the restaurant. A maximum of one food sampling inspection per restaurant, per year, may be used to meet the quarterly inspection requirement for restaurants.~~

- (2) Provisions for investigating complaints and suspected outbreaks of illness associated with food, lodging, and institutional facilities, and public swimming pools. Corrective actions shall be taken in cases of valid complaints and confirmed outbreaks of illness.
- (3) Provisions for keeping records of activities described in Subparagraphs (a)(1) and (2) of this Rule.

(b) A local health department shall establish, implement, and maintain written policies for the provision of sanitation education for food service personnel and orientation and in-service training for Environmental Health Specialists~~sanitarians~~. The policies shall include the following minimum requirements for Environmental Health Specialists~~sanitarians~~ providing food, lodging, and institutional sanitation services:

- (1) Centralized Intern Training (CIT) Initial field training~~for newly employed Environmental Health Specialists; sanitarians;~~

(2) ~~CDC Homestudy Course 3010-G or its equivalent as approved by the Division of Public Health Health; Compliance with Delegation of Authority as stated in 15A NCAC 010 .0100; and~~

(3) ~~North Carolina State University Food Protection Short Course or its equivalent as approved by the Division of Public Health; and~~

(3)(4) Compliance with the Board of Sanitarian Examiners' requirements.

Authority G.S. 130A-4(b); 130A-9.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

15A NCAC 18A .2601 DEFINITIONS

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

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food equipment that is certified for sanitation by an American National Standards Institute (ANSI) – accredited program shall be approved. ANSI sanitation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) and are also available for inspection at the Division of Environmental Health.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Critical Violation" means a violation relating to any one of the five risk factors that directly contribute to foodborne disease outbreaks:

- (a) improper hot and cold holding, cooling or reheating potentially hazardous foods;
 - (b) inadequate cooking;
 - (c) poor personal hygiene of food handlers;
 - (d) cross-contamination; or
 - (e) food from unapproved sources.
- (5)(4) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (6)(5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (7)(6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment, or who is employed at any time in a room in which food or drink is prepared or served.
- (8)(7) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (9)(8) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- (10)(9) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (11)(10) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (12)(11) "Food stand" means a food service establishment which prepares or serves foods and which does not provide seating facilities for customers to use while eating or drinking.
- (13)(12) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (14)(13) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (15)(14) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:
- (a) immunocompromised, preschool age children or adults, 55 years of age or older; and
 - (b) obtaining food as a patient or client at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- (16)(15) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- (17)(16) "Local health director" means the administrative head of a local health department or his authorized representative.
- (18)(17) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (19)(18) "Meat market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- (20)(19) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (21)(20) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (22)(21) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (23)(22) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- (24)(23) "Private club" means a private club as defined in G.S. 130A-247(2).

- (25)(24) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (26) "Risk Factor" means a contributing factor that increases the chance of developing foodborne illness as it relates to food safety issues within a food service establishment, such as approved sources, cooking temperatures, personal hygiene, contamination and holding.
- (27)(25) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (28)(26) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (29)(27) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (30)(28) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (31)(29) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- (32)(30) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (33)(31) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- (34)(32) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (35)(33) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no employee is identified as the responsible person, Environmental Health Specialists shall invite an employee to accompany them on the inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.

(b) The grading of restaurants, food stands, drink stands, or meat markets shall be done on an inspection form furnished by the Department to local health departments. The form shall provide for but need not be limited to the following information:

- (1) the name and mailing address of the facility;
- (2) the name of person to whom permit is issued;
- (3) the permit and score given;
- (4) standards of construction and operation as listed in Rules .2607 through .2644 of this Section;
- (5) a short explanation for all points deducted;
- (6) the signature of the Environmental Health Specialist;
- (7) the date.

(c) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food service establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The Environmental Health Specialist shall take zero, one-half or a full deduction of points depending upon the severity or the recurring nature of the non-critical violation. Critical violations may be corrected on-site and one-half of the total point value shall be deducted when the violation meets all three of the following criteria:

- (1) the violation has not been documented on either of the two previous inspections;
- (2) the violation is recorded; and
- (3) correction of the item is documented on the inspection form.

(d) At the time of inspection, if a critical violation is observed and not corrected, the Environmental Health Specialist shall take on-half or a full deduction of points depending upon the severity or the recurring nature of the violation. The Environmental Health Specialists shall specify a time frame of no more than 10 calendar days to correct the critical violation. The Environmental Health Specialist shall return to the food service establishment to verify the correction of the critical violation and document the correction on a new "Inspection of Food Service Establishment" form as a visit. The results of the critical violation correction shall not affect the posted grade.

~~(e)(d)~~ In determining whether items or areas of an establishment are clean for purposes of enforcing the rules set forth in this Section and grading an establishment, the Environmental Health Specialist shall consider, among other things: the age of the accumulated material, the relative percentage of items which are clean and not clean, the cleaning practices of the establishment and the health risk posed by the circumstances.

~~(f)(e)~~ Upon request of the permit holder or his or her representative a reinspection shall be made.

~~(g)(f)~~ In the case of establishments that have been closed for failure to comply with the Rules of this Section, a reinspection to

Authority G.S. 130A-248.

15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a food service establishment, Environmental Health Specialists shall identify themselves and their purpose in

consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Environmental Health Specialist. (h)(g) In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the Environmental Health Specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 15 days, from the date of the request.

Authority G.S. 130A-248.

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 15A NCAC 18A .3601 - .3639.

Proposed Effective Date: October 1, 2007

Public Hearing:

Date: November 16, 2006

Time: 10:30 a.m.

Location: 2728 Capital Boulevard, 1a201, Raleigh, NC

Reason for Proposed Action: To update Resident Camp rules.

Procedure by which a person can object to the agency on a proposed rule: Any objections to these rules may be submitted in writing via mail, delivery service, hand deliver or email to: Denise L. Bentley, 590 West Pointe Drive, Vilas, NC 28692, phone (828) 297-6133, email denise.Bentley@ncmail.net

Comments may be submitted to: Denise L. Bentley, 590 West Pointe Drive, Vilas, NC 28692, phone (828) 297-6133, email Denise.Bentley@ncmail.net

Comment period ends: January 1, 2007

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 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .3600 - RULES GOVERNING THE SANITATION OF RESIDENT CAMPS

15A NCAC 18A .3601 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Approved" means food that complies with requirements of the N.C. Department of Agriculture and Consumer Services or the U.S. Department of Agriculture or 15A NCAC 18A .2600 Rules Governing The Sanitation of Food Service Establishment and the requirements of the rules of this Section. "Approved" also means equipment and procedures determined by the Department to be in compliance with the rules of this Section. Food service equipment that is certified for sanitation by an American National Standards Institute (ANSI)-accredited program shall be approved. ANSI sanitation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) and are also available for inspection at the Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632.
(2) "Children's Foster Care Camp" means a residential child care facility which provides foster care at either a permanent camp site or in a wilderness setting as defined in G.S. 131D and 10A NCAC 70J .0100. Children's Foster Care Camps are licensed by the NC Department of Health and Human Services, Division of Facility Services in accordance with G.S. 131D and 10A NCAC 70J .0100.
(3) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources or its authorized representative. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to: Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources, 1632 Mail Service Center, Raleigh, NC 27699-1632.
(4) "Employee" means any camp personnel paid or volunteer who handle food or drink during preparation or serving, or who come in contact with any eating or cooking utensils, or who work at any time in a room in which food or drink is prepared.

- (5) "Environmental health specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (6) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drain boards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens and other food preparation and holding appliances.
- (7) "Food" means any raw, cooked or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (8) "Good repair" means capable of being cleaned and used for the intended purpose.
- (9) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (10) "Limited resident camp" means a resident camp that is in compliance with the rules of this Section with the exception of Paragraph (d) of Rule .3628 of this Section for all equipment excluding required dishwashing facilities. The population of such camps shall be limited to a total of 90 campers and staff per session.
- (11) "Local health director" means a local health director as defined in G.S. 130A-2(6).
- (12) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (13) "Off-site" means packouts, cookouts or any activity where food is prepared outside the approved kitchen facility.
- (14) "Permanent sleeping quarters" means those buildings, cabins, platform tents, covered wagons, or teepees that remain in a fixed location during the resident camp operation and are used as primary residences for campers, staff or user groups.
- (15) "Permit to operate" means a permit issued by the Department upon evaluation and approval of the Resident Camp facility.
- (16) "Person" means a person as defined in G.S. 130A-2(7).
- (17) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat-treated foods of animal origin, raw seed sprouts and treated foods of plant origin. The term does not include foods that have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (18) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- (19) "Resident camp" includes those camp establishments which provide food and overnight lodging accommodations for 72 consecutive hours or more per week at a permanent base of operations for groups of children or adults engaged in organized recreational or educational programs and has a permanent connection to a public electrical service provider. Programs are operated and staffed by the camp and/or supervision of individual campers is a camp responsibility. This definition does not include campgrounds or other facilities that only rent property or campsites for camping. This definition does not include Primitive Experience Camp as defined in 15A NCAC 18A .3500. This definition does include Children's Foster Care Camps and Residential Therapeutic (Habilitative) Camps.
- (20) "Residential Therapeutic (Habilitative) Camp" is a residential treatment facility provided in a camping environment which is designed to help individuals develop behavior control, coping skills, self-esteem and interpersonal skills as defined in G.S. 122C and 10A NCAC 27G .5200. Therapeutic camps are licensed by the NC Department of Health and Human Services, Division of Facility Services in accordance with G.S. 122C and 10A NCAC 27G .5200.
- (21) "Responsible person" means the administrator, operator, owner or other person in charge of the operation at the time of the inspection. If no individual is the apparent supervisor, then any staff member is the responsible person.
- (22) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in Rule .3629 of this Section.
- (23) "Sewage" means sewage as defined in 15A NCAC 18A .1900. Sewage is the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (24) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- (25) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials,

- toothpicks and similar articles intended for one-time, one-person use and then discarded.
- (26) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation or serving.

Authority G.S. 130A-248; 130A-235.

15A NCAC 18A .3602 STANDARDS AND APPROVAL OF PLANS

- (a) Plans, drawn to scale, and specifications for proposed camps shall include a topographic map, buildings and equipment, water supply system, wastewater disposal system, recreational waters and shall be submitted to the health department of the county in which the site is located. Plans, drawn to scale, and specifications shall also be submitted to the local health department for any additions or renovations to existing buildings or any new buildings or facilities in existing resident camps. The local health department shall require a topographic map upon determination that the proposed changes will impact camp sanitation or drinking water supplies.
- (b) Construction shall not be started until the plans and specifications have been approved by the local health department.

Authority G.S. 130A-235; 130A-235.

15A NCAC 18A .3603 PERMITS

- (a) No person shall operate a resident camp within the State of North Carolina who does not possess a valid permit from the Department except that residential therapeutic (habilitative) camps and children's foster care camps licensed by the Department of Health and Human Services, Division of Facility Services are not required to obtain permits. No permit to operate shall be issued until an evaluation by the Department or its authorized agent shows that the resident camp complies with the requirements of this Section.
- (b) Resident camps that operate six months or less per calendar year and do not offer activities, programs, services or food to the public for pay during the remaining six months shall be required to obtain a seasonal permit for each operating season.
- (1) Camps must submit in writing information for a seasonal permit including the name of the camp, the name of the camp owner or responsible person, the physical and billing addresses of the camp, the planned dates of operation, the capacity of the camp including campers and staff, at least 45 days prior to the scheduled opening session. The seasonal permit shall include the dates of operation and shall expire six months from the date of issuance. For non-community water systems regulated under 15A NCAC 18A 1700, the local health department shall conduct a pre-opening evaluation at least 30 days prior to the scheduled opening day of camp to verify the water system is in compliance with Rule .3609 of this Section. If the local health department

- is unable to meet this requirement, they shall notify the camp and the camp shall submit a water sample to a certified lab to meet this requirement. Community water systems regulated under 15A NCAC 18C are not required to meet this sampling requirement.
- (2) Prior to opening, resident camps shall provide to the local health department written documentation that:
- (A) the equipment needed to maintain required food temperatures is operational, clean and sanitized as required;
 - (B) all other equipment and utensils are operational, clean and sanitized as required;
 - (C) dishmachines, if any, are clean and operating properly; and
 - (D) kitchen and lodging facilities are in good repair, clean and free of vermin.
- (c) Upon transfer of ownership of an existing resident camp, the Department shall evaluate the facility to determine compliance with this Section. The Department shall issue a permit if the resident camp satisfies all the requirements of this Section. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to the public health, a transitional permit may be issued. The transitional permit shall expire 180 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the resident camp shall not continue to operate.
- (d) The Department may impose conditions on the issuance of a permit or transitional permit. Conditions may be specified for one or more of the following areas:
- (1) number of persons served;
 - (2) categories of food served;
 - (3) time schedules in completing minor construction items;
 - (4) modification or maintenance of water supplies, water use fixtures and sanitary sewage systems;
 - (5) use of facilities for more than one purpose;
 - (6) continuation of contractual arrangements upon which basis the permit was issued;
 - (7) submission and approval of plans for renovation; or
 - (8) other conditions necessary for the resident camp to remain in compliance with this Section.
- (f) A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23. A new permit to operate shall be issued only after the resident camp has been reinspected by the Department and found to comply with this Section. This reinspection shall be

conducted within a reasonable length of time, not to exceed 30 days, after the operator makes the request.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3604 PUBLIC DISPLAY OF GRADE CARD

Inspections of resident camps shall be made in accordance with this Section. Upon completion of an inspection, the environmental health specialist shall remove the existing grade card, issue a new grade card and post the new grade card in a conspicuous place where the public may readily observe it upon entering the facility. The owner or operator shall be responsible for keeping the grade card posted at the location designated by the environmental health specialist at all times. If the responsible person of the resident camp objects to the location designated by the environmental health specialist, then the responsible person may suggest an alternative location that meets the criteria of this Rule. The grade card may be posted in another location that meets the criteria of this Rule if agreed upon by the responsible person and the environmental health specialist.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3605 INSPECTIONS AND REINSPECTIONS

(a) For resident camps that operate six months or less per calendar year, an unannounced inspection shall be conducted at least once during the operating season. For resident camps that operate more than six months per calendar year, an unannounced inspection shall be conducted at least once each six-month operating period.

(b) Upon entry into a resident camp, the environmental health specialist shall identify herself or himself and state the purpose for the visit. The environmental health specialist shall inquire about the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no staff member is identified as the responsible person, the environmental health specialist shall invite a staff member to accompany them on the inspection. Following the inspection, the environmental health specialist shall offer to review the results of the inspection with the responsible person.

(c) The grading of resident camps shall be done on an inspection form furnished by the Department to local health departments. The form shall provide for, but not be limited to, the following information:

- (1) name and mailing address of the facility;
- (2) name of person to whom permit is issued;
- (3) permit and score given;
- (4) standards of construction and operation as listed in Rules .3608 through .3638 of this Section;
- (5) short explanation for all points deducted;
- (6) signature of the environmental health specialist; and
- (7) date.

(d) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within

the resident camp. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The environmental health specialist shall take zero, one-half or a full deduction of points depending upon the severity or the recurring nature of the violation.

(e) In determining whether items or areas of a resident camp are clean for purposes of enforcing the Rules set forth in this Section and grading a resident camp, the environmental health specialist shall consider, among other things:

- (1) age of the accumulated material;
- (2) relative percentage of items that are clean and not clean;
- (3) cleaning practices of the resident camp; and
- (4) health risks posed by the circumstances.

(f) Upon request of the permit holder or her or his representative, a reinspection shall be made.

(g) In the case of resident camps that have been closed for failure to comply with the rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made by the environmental health specialist.

(h) In the case of resident camps that request an inspection for the purpose of raising the alphabetical grade and hold unrevoked permits, the environmental health specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 15 days from the date of the request.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3606 GRADING

(a) The sanitation grading of all resident camps shall be based on a system of scoring wherein all resident camps receiving a score of at least 90 percent shall be awarded Grade A; all resident camps receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all resident camps receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Resident Camps shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Rule .3608 of this Section regarding site factors for camp facilities and activities and actual or potential health hazards shall be assessed a value of one point.
- (2) Violation of Rule .3609 of this Section regarding water supply, hot and cold water heating facilities in food preparation, utensil and hand washing, and areas required for cleaning shall be assessed a value of three points.
- (3) Violation of Rule .3609 (d) of this Section regarding cross-connections shall be assessed a value of three points.
- (4) Violation of Rule .3610 of this Section regarding wastewater disposal shall be assessed a value of three points.
- (5) Violation of Rule .3611 of this Section regarding solid waste storage and cleaning

- facilities shall be assessed a value of two points.
- (6) Violation of Rule .3612 of this Section regarding swimming pools shall be assessed a value of one point.
- (7) Violation of Rule .3613(1) and (2) of this Section regarding camp building floors walls and ceilings construction, cleanliness and repair shall be assessed a value of one points.
- (8) Violation of Rule .3613(3) of this Section regarding lighting and ventilation adequacy and repair shall be assessed s value of one point.
- (9) Violation of Rule .3614(a) and (c) of this Section regarding sleeping quarters and lodging arrangement, cleanliness and repair shall be assessed a value of two points.
- (10) Violation of Rule .3614(b) of this Section regarding effective vermin exclusion shall be assessed a value of two points.
- (11) Violation of Rule .3614(d) of this Section regarding storage and handling of clean and dirty linen and clothing shall be assessed a value of one point.
- (12) Violation of Rule .3615(a), (b), (c) and (d) of this Section regarding approval, accessibility, adequateness, cleanliness and repair of lavatories, bathing and toilet facilities shall be assessed a value of two points.
- (13) Violation of Rule .3615(e) of this Section regarding cleanliness, repair of laundry facilities and handling of clean and soiled laundry shall be assessed a value of one point.
- (14) Violation of Rule .3616 of this Section regarding approval and cleanliness of drinking water facilities shall be assessed a value of two points.
- (15) Violation of Rule .3617(a) and (d) of this Section regarding storage and handling of pesticides and potentially hazardous materials shall be assessed a value of two points.
- (16) Violation of Rule .3617(b) and (e) of this Section regarding cleanliness of the premises and repair of protective enclosures shall be assessed a value of one point.
- (17) Violation of Rule .3617(c) of this Section regarding location of animal stables and approved manure storage and removal shall be assessed a value of two points.
- (18) Violation of Rule .3618(a) of this Section regarding size and construction of food service facilities and dining halls shall be assessed a value of one point.
- (19) Violation of Rule .3618(b) of this Section regarding catering of camp food service shall be assessed a value of two points.
- (20) Violation of Rule .3619 of this Section regarding field sanitation standards and procedures shall be assessed a value of three points.
- (21) Violation of .Rule 3620(a) and (c) of this Section regarding food service employee clothing, hair restraints and use of tobacco shall be assessed a value of one point.
- (22) Violation of Rule .3620(b) or (e) of this Section regarding employee handwashing shall be assessed a value of four points.
- (23) Violation of Rule .3620(d) of this Section regarding exclusion of persons with a communicable or infectious disease that can be transmitted by food shall be assessed a value of three points.
- (24) Violation of Rule .3621 of this Section regarding food source, wholesomeness, handling, service and transportation shall be assessed a value of four points.
- (25) Violation of Rule .3622(a) through (f) of this Section regarding food protection during service and storage shall be assessed a value of three points.
- (26) Violation of Rule .3622(g) of this Section regarding storage of dry foods shall be assessed a value of two points.
- (27) Violation of Rule .3623 of this Section regarding milk and milk products shall be assessed a value of two points.
- (28) Violation of Rule .3624 of this Section regarding the source, storage and handling of ice shall be assessed a value of two points.
- (29) Violation of Rule .3625 of this Section regarding shellfish and crustacea meat shall be assessed a value of two points.
- (30) Violation of Rule .3626(a), (b), and (c) of this Section regarding refrigeration and thawing of foods shall be assessed a value of two points.
- (31) Violation of Rule .3626(d) of this Section regarding the protection of food from cross contamination by use of sanitized or gloved hands or utensils, sanitized surfaces and washing of produce shall be assessed a value of three points.
- (32) Violation of Rule .3626(e) through (m) of this Section regarding time and temperature requirements of foods during storage, preparation, cooking, display, service, and transportation shall be assessed a value of four points.
- (33) Violation of Rule .3626(n) of this Section regarding food thermometers shall be assessed a value of two points.
- (34) Violation of Rule .3627 of this Section regarding re-service of foods shall be assessed a value of two points.
- (35) Violation of Rule .3628 of this Section regarding equipment and utensil construction, repair and cleanliness shall be assessed a value of three points.

- (36) Violation of Rule .3629(a) through (c), (e), (f), (k) and (n) of this Section regarding washing, rinsing and sanitizing of utensils and equipment shall be assessed a value of three points
- (37) Violation of Rule .3629(d), (g) through (j), (l), and (o) of this Section regarding approved dishwashing facilities and methods shall be assessed a value of three points.
- (38) Violation of Rule .3629(m) regarding the hot water heating facilities for food service needs shall be assessed a value of three points.
- (39) Violation of Rule .3630 in this Section regarding storage and handling of utensils and equipment shall be assessed a value of two points.
- (40) Violation of Rule .3631 of this Section regarding food service area storage spaces shall be assessed a value of one point.
- (41) Violation of Rule .3632 of this Section regarding food service area lighting shall be assessed a value of one point.
- (42) Violation of Rule .3633 of this Section regarding food service ventilation shall be assessed a value of one point.
- (43) Violation of Rule .3634 of this Section regarding approved and properly located hand washing lavatory facilities in food service areas shall be assessed a value of three points.
- (44) Violation of Rule .3635 of this Section regarding the food service area toilet facilities shall be assessed a value of one point.
- (45) Violation of Rule .3636 of this Section regarding food service area floor construction, cleanliness and repair shall be assessed a value of one point.
- (46) Violation of Rule .3637 of this Section regarding food service area wall and ceiling construction, cleanliness and repair shall be assessed a value of one point.
- (47) Violation of Rule .3638(a) through (c) of this Section regarding use of trip kitchens, residential style educational kitchens and domestic kitchens shall be assessed a value of one point.
- (48) Violation of Rule .3638(d) through (g) of this Section regarding toxic materials, food service laundry, mop and broom storage shall be assessed a value of one point.
- (49) Violation of Rule .3638(h) and (i) of this Section regarding live animals and pest control measures in food service areas shall be assessed a value of two points.
- (50) One half of the point value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.

(b) The grading of resident camps shall be based on the standards of operation and construction as set forth in Rules

.3608 through .3638 of this Section. An establishment shall receive a credit of one point on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department under 15A NCAC 18A .2606. Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health as required in 15A NCAC 18A .2606(b). Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted grade card shall be black on a white background. All graphics, letters and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the local health department, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be clearly labeled as an award.

(d) Nothing herein shall affect the right of a permit holder to a reinspection pursuant to Rule .3605 of this Section.

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3607 PROCEDURE WHEN INFECTION SUSPECTED

When the local health department has reason to suspect the possibility of exposure to, or transmission of, infection within a resident camp from any person or from any food or drink, the local health director shall act in accordance with the Communicable Disease Laws and Rules (G.S. 130A-134 through 148, 10A NCAC 41A).

Authority G.S. 130A-235; 130A-485.

15A NCAC 18A .3608 SITE

The topography, drainage and other site factors for the camp facilities and activities, shall be such that the site is free of actual or potential health hazards.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3609 WATER SUPPLY

(a) Water supplies shall be in accordance with 15A NCAC 18A .1700, Rules Governing the Protection of Water Supplies.

(b) Water samples for bacteriological analysis from non-community supplies shall be collected by the Department and submitted to the laboratory section of the Department or another laboratory certified by the Department for analysis, and at least annually thereafter for bacteriological analysis.

(c) Prior to issuance of a permit, the responsible person shall list non-community water supplies with the Public Water Supply Section, Division of Environmental Health.

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

(e) Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation, utensil and handwashing areas, and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all food preparation, utensil washing, handwashing, cleaning and other water-using operations.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3610 LIQUID WASTES

All sewage and wastewater shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3611 SOLID WASTES

(a) All solid wastes containing food scraps and other decomposable material shall, prior to disposal, be kept in leak-proof, non-absorbent containers such as standard garbage cans, which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use. Lids shall be kept in place, except for cans inside the kitchen, which are being used frequently during normal operations. The contents of these cans shall be removed frequently and the cans shall be washed. Storage racks elevated above the ground are required for outside storage of garbage cans. All dry rubbish (including scrap paper, cardboard or similar items) shall be stored in containers, rooms or designated areas, in an approved manner.

(b) The rooms, enclosures, designated areas and containers shall be adequate for the storage of all solid wastes accumulating on the premises. Cleaning facilities, including a mixing faucet with hose threads, shall be provided and each container, room or designated area shall be thoroughly cleaned after emptying or removal of wastes. All solid wastes shall be disposed of with sufficient frequency in an approved manner.

(c) Garbage and trash resulting from the kitchen operations shall be removed from the building as frequently as may be necessary and disposed of in an approved manner.

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

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3612 SWIMMING POOLS

When swimming pools are provided for recreational use, they shall meet the requirements in 15A NCAC 18A .2500, Rules Governing Public Swimming Pools.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3613 CAMP BUILDINGS CONSTRUCTION AND MAINTENANCE REQUIREMENTS

All camp buildings except food service areas shall be kept clean and in good repair and shall comply with the following specific requirements:

(1) All floors shall be of such materials and so constructed to be easily cleanable, shall be kept free of obstacles to cleaning and shall be kept clean and in good repair. The floor area shall be sufficient to accommodate all necessary operations. Floors in dressing or locker rooms; laundry rooms; and toilet rooms shall be of non-absorbent materials such as sealed concrete, sealed wood, terrazzo, tile, durable grades of linoleum or plastic, or equal. In all rooms in which water is routinely discharged to the floor, or in which floors are subjected to flood-type cleaning, floors shall be sealed concrete, terrazzo, tile or equal, shall slope to drain and be provided with floor drains.

(2) The walls of all rooms shall be kept clean and in good repair. All walls and ceilings in dressing or locker rooms; toilet rooms and bathrooms shall be easily cleanable; and walls shall have washable surfaces to the highest level reached by splash or spray in rooms or areas where such occur.

(3) All rooms and areas shall be well lighted and ventilated, by natural or artificial means, which shall be effective under actual use conditions. Lighting fixtures and ventilation equipment shall be kept clean and in good repair. Vents to the outside air shall discharge in such a manner as not to create a nuisance.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3614 LODGING FACILITIES

(a) Permanent sleeping quarters shall provide cross ventilation, at least 30 inches between beds, a minimum of six feet between heads of sleepers and at least one bed for every camper. Only single beds or double level bunk beds shall be allowed.

(b) Effective methods, such as mosquito netting, screening and self-closing doors, or individual mosquito netting shall be provided to exclude insects, bats and vectors.

(c) Lodging facilities shall be kept clean and in good repair.

(d) Clean linen and clothes shall be stored and handled separately from soiled linen and clothes.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3615 TOILET; HANDWASHING; LAUNDRY; AND BATHING FACILITIES

(a) All resident camps shall be provided with toilet and handwashing facilities within 500 feet of permanent sleeping quarters.

(b) Toilet facilities shall be provided at a rate of not more than 20 campers and staff per toilet seat. Urinals may be provided for up to one-third of required seats for males.

(c) Lavatory facilities with potable running water, soap and individual towels or approved hand-drying devices shall be provided and located convenient to all flush toilet facilities.

(d) Bathing facilities shall be provided with hot and cold potable water.

(e) All toilet, handwashing and bathing fixtures shall be kept clean and in good repair.

(f) Laundry facilities, if provided, shall be kept clean and in good repair. Soiled laundry shall be handled and stored separately from clean laundry. Clean linen and clothes shall be stored and transported in clean containers.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3616 DRINKING WATER FACILITIES

Drinking water facilities shall be provided. Drinking fountains, if provided, shall be of a sanitary angle-jet design, shall be kept clean and shall be properly regulated such that water flow is at least two inches above the mouth piece. This Rule shall not be interpreted as prohibiting the pitcher service of ice water or the service of bottled water.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3617 PREMISES; VERMIN CONTROL AND MISCELLANEOUS

(a) Only those pesticides shall be used which have been approved for a specific use and properly registered with the Environmental Protection Agency and with the North Carolina Department of Agriculture and Consumer Services. Such pesticides shall be used as directed on the label and shall be handled and stored to avoid health hazards.

(b) The premises under control of the management shall be kept neat, clean and free of litter.

(c) Animal stables, if provided, shall be in a location removed from the main recreation center of activity. All manure shall be stored, removed or disposed of to minimize the breeding of flies.

(d) Potentially hazardous materials such as fuel, chemicals, explosives, equipment and apparatuses, shall be handled and stored to minimize health hazards.

(e) Protective railings, fences or similar enclosures shall be provided where necessary and shall be kept in good repair.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3618 FOOD SERVICE FACILITIES

(a) Food service facilities shall include a kitchen of adequate size for the number of meals served and completely enclosed, permanent construction and a dining hall providing protection from the elements.

(b) If camp food service is provided by contract with an outside person, or camp food service is operated by an out side firm the overall responsibility for food service sanitation remains with the camp management. The camp management is responsible for confirming that all food provided by outside person shall be approved.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3619 FIELD SANITATION

Resident camps may conduct cookouts, overnight trips or similar primitive camping activities provided field sanitation standards are maintained in accordance with the provisions of the rules of this Section. Written procedures regarding field sanitation standards shall be posted or made readily available for inspection by the Department. It is the responsibility of the resident camp to ensure the approved procedures are being practiced, utilized and maintained. Minimum field sanitation requirements for resident camps are as follows:

(1) Off-Site Food: Storage, Preparation and Cooking shall meet the following requirements:

(a) Temperature control, food preparation and food protection methods shall be implemented to ensure all potentially hazardous foods stored and prepared for off-site cooking maintain temperatures of 45°F (7°C) or less or 135°F (57°C) or higher and are protected from contamination. Written procedures describing the specific off-site cooking activity and the proposed temperature control methods shall be submitted to the Department for approval. Any proposed changes to current procedures shall be submitted to the Department for approval. Specific approvals will remain valid so long as the activity remains part of the camp program unless the Department determines that procedures are not being maintained in accordance with the approval. Where potentially hazardous foods are prepared off-site, written procedures shall also include methods to prevent cross contamination. For the purpose of off-site food storage, coolers with ice or ice packs are considered an approved method of temperature control. Off-site potentially hazardous foods once cooked shall be consumed within two hours or discarded. Poultry stuffings, stuffed meats and stuffings containing meat shall not be used.

(b) Potentially hazardous foods shall be thawed as follows:

- (i) in cold holding units at a temperature not to exceed 45° F (7° C);
- (ii) under potable running water of a temperature of 70° F (21° C), or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or
- (iii) as a part of the cooking process.
- (c) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 145° F (63° C) except as follows:
 - (i) poultry shall be cooked to at least 165° F (74° C) with no interruption of the cooking process;
 - (ii) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C);
 - (iii) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C);
 - (iv) rare roast beef shall be cooked to an internal temperature of at least 130° F (54° C); and
 - (v) rare beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.
- (d) Liquid eggs, uncooked frozen dry eggs and egg products shall be cooked before consumption. This Paragraph does not apply to pasteurized products.
- (e) A metal stem-type food thermometer accurate to ±2° F (±1° C) shall be available to check potentially hazardous food temperatures.
- (2) Off-Site Drinking Water shall meet the following requirements:
 - (a) Water transported for off-site drinking shall be from an approved source and shall be transported and stored in clean, sanitized containers designated solely for this purpose. Where it is not practical to transport drinking water for off-site activities, bactericidal treatment measures shall be provided to ensure that drinking water is free from disease causing organisms.
 - (b) Water shall be taken from free-flowing streams, springs and wells; however, water may be taken from still sources when free-flowing sources are unavailable. Water shall be visibly clear and free from debris, trash and organic matter.
- (3) Approved Methods of Bactericidal Treatment of Off-Site Drinking Water shall meet the following requirements:
 - (a) Water shall be brought to a rolling boil for a minimum of one minute; or
 - (b) Water shall be filtered to remove cysts and viruses by using a filtration system with an absolute pore size of one micron or smaller, and treated with:
 - (i) A minimum of two ppm free chlorine residual maintained for a minimum of 30 minutes; or
 - (ii) A minimum of five drops of two percent tincture of iodine per liter of water. For commercially prepared tablets, use per manufacturer's directions.
 - (c) Alternate methods of bactericidal treatment capable of removing bacteria, viruses, cysts and parasites may be approved by the Department. Documentation that demonstrates the method is equivalent to SubItem (3)(a) or (3)(b) of this Rule shall be submitted by the owner or operator for approval.
- (4) Utensils and Equipment shall meet the following requirements:
 - (a) All eating, drinking and cooking utensils, and other items used in connection with the preparation of food shall be kept clean and in good repair.
 - (b) All surfaces intended for multi-use between campers or staff with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic materials in which there are no open cracks or joints that will collect food particles or slime and be kept clean.
 - (c) Multi-use drinking and eating utensils which do not meet all the construction provisions of SubItem (4)(b) of this Rule shall be used by only one individual, constructed of

- not readily corrodible, non-toxic materials, and shall not be reassigned to or reused by another individual.
- (d) Where multi-use eating utensils are used, they shall be assigned to one individual and not shared until cleaned and sanitized by approved methods.
- (5) Cleaning of Utensils and Equipment shall meet the following requirements:
- (a) Utensils and equipment shall be kept clean.
- (b) Water used for cleaning shall meet the requirements of Items (2) and (3) of this Rule.
- (c) Where an approved sanitizing process cannot be implemented, each individual's multi-use utensils shall be cleaned separately to prevent cross-contamination.
- (d) Multi-use utensils not assigned for individual use may be cleaned together provided they are washed, rinsed and sanitized by approved methods.
- (6) Handwashing for food preparers shall be in compliance with Paragraph (b) of Rule .3620 of this Section. Facilities shall be provided for employees' handwashing; these may consist of a pan, potable water, soap and single-use towels. Hair restraints are not required for field sanitation employees.
- (7) Toxic materials shall be labeled and stored to prevent contamination of food, equipment and utensils.
- (8) Where permanent human waste disposal facilities which meet the requirements of 15A NCAC 18A .1900 are not provided at an off-site activity, written procedures for waste disposal shall be provided to and approved by the Department. Disposal of human waste shall be in a hole that is at least six inches deep and has a diameter of at least four inches located at least 200 feet from any surface water. After use, the hole shall be back filled with soil to a depth of six inches.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3620 FOOD SERVICE EMPLOYEES

- (a) All employees shall wear clean outer clothing and shall be clean as to their person and methods of food handling. No employee shall use tobacco in any form while engaged in the washing of eating and cooking utensils or in the preparation, handling or serving of food.
- (b) Employees shall wash their hands thoroughly in a lavatory which meets the requirements of Rule .3634 of this Section before starting work, after each visit to the toilet and as often as may be necessary to remove soil and contamination.

- (c) Effective hair restraints such as hairnets, caps or wrap around visors shall be worn by employees engaged in the preparation or handling of food to prevent the contamination of food or food contact surfaces. Wigs and hairspray do not constitute compliance with this Rule. This Rule does not apply to employees who only serve beverages, set tables or participate in family dining-table type of service if they present a minimal risk of contaminating exposed food.
- (d) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound or a disease with sudden onset and severe symptoms including cough and nasal discharge, shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces, with disease-causing organisms or transmitting the illness to other persons.
- (e) Employees are allowed to have beverages in areas where food is prepared as long as those beverages are covered and consumed in a sanitary manner. Beverage containers shall not be stored on or above a food contact surface and must be handled in a manner to avoid cross-contamination.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3621 FOOD SUPPLIES

All food shall be obtained from sources that comply with all laws relating to food and food labeling and shall be properly identified. All meat, meat food products, poultry and poultry products shall have been inspected for wholesomeness, where required, under an official federal, state or local regulatory program; and, in all cases, the source shall be identifiable from labeling on carcasses, cuts, unit packages, bulk packages or from bills of sale. Foods in hermetically sealed containers shall have been processed in a commercial food-processing establishment operated in compliance with G.S. 106-120 through 145. Copies of G.S. 106-120 through 145 may be obtained from the Food and Drug Protection Division, North Carolina Department of Agriculture. All food shall be clean, wholesome, and free from adulteration and spoilage, safe for human consumption and shall be handled, served or transported in such a manner to prevent contamination, adulteration and spoilage. Only approved containers and utensils may be used. Foods that are spoiled or otherwise unfit for human consumption shall be immediately disposed of as garbage or returned to the source except as specified in Rule .3607 of this Section. Foods to be returned to the source shall be marked as such and stored in a fashion not to contaminate other food.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3622 FOOD PROTECTION

- (a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that hand openings may be permitted on counter fronts. A continually staffed beverage station is not required to provide glass or similar shields for beverages, ice and beverage garnishes. Contaminated beverages,

ice or beverage garnishes shall be removed from the beverage station. This requires standard counter protector installations for all cafeteria counters, salad bars and similar type service to prevent contamination by customers' coughing and sneezing. Nothing in this Rule shall require food kept in enclosed cases to be wrapped or covered as long as effective measures are taken to prevent contamination in multi-level shelving units.

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

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

(c) Foods, except raw vegetables that are to be cooked, shall be kept under cover when not in the process of preparation and serving. Foods shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper, foil or plastic food film. Food transported to a camp shall not be accepted unless wrapped, boxed or covered to prevent contamination and maintained at temperatures required in Rule .3626 of this Section. Food and drink shall not be served to the general public in the kitchen.

(d) Containers for onions, slaw, mustard and other condiments not kept in accordance with the requirements of Paragraph (a) of this Rule shall have covers and be kept covered when not in use.

Sugar shall be dispensed with either pour-type dispensers or individual packages. Staff shall avoid unnecessary handling of food in the process of serving.

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

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

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3623 MILK AND MILK PRODUCTS

(a) Only Grade "A" pasteurized milk and milk products shall be used. The term "milk products" shall mean milk products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Department of Environment and Natural Resources, Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632.

(b) The mixing of cream and milk or the pouring of either into jars, bottles or other containers for storage therein shall be prohibited. Where meals are served in a communal or family type dining area, milk may be served by pouring it into individual glasses or cups from original containers of not more than one-gallon capacity, which have been provided by a milk distributor. The milk remaining in the container shall be immediately refrigerated and used for cooking purposes only. The transfer of milk from its original container into any type of container other than glasses or cups as specified in this Rule is prohibited.

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

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

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3624 ICE HANDLING

(a) Ice that is to be used in fountain drinks, ice water, tea and coffee, or in connection with the chilling or serving of salads, vegetables or other foods shall be manufactured from an water supply meeting the requirements of Rule .3609 of this Section and shall be stored and handled in a sanitary manner.

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

(c) Ice grinders, pans and buckets used in preparing chipped or crushed ice shall be protected from contamination, thoroughly

cleaned between usages and kept in good repair; buckets and other containers used in the transportation of ice shall be stored above the floor in a clean place.

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

(e) Ice machines shall be kept clean.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3625 SEAFOOD

(a) All shellfish and crustacea meat shall be obtained from sources in compliance with 15A NCAC 18A .0300 through .0900, which may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall appear on the "Interstate Certified Shellfish Shippers List" as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. If the source of the cooked crustacea meat is within the United States, the processor's name, address, and certificate number with State abbreviation shall appear on the container. If the source of the cooked crustacea meat is outside the United States, containers must meet Federal labeling requirements, Food and Drug Administration, HHS Food Labeling requirements, 21 CFR Chapter 1, Part 101-Food Labeling.

(b) All shucked shellfish shall be stored in the original container. Each original container shall be identified with the name and address of the packer or repacker, and the certification number, and the abbreviated name of the state or territory. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be clearly identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were taken, the date of harvest, the kind and quantity of the shellstock in the container, and the name and address of the consignee.

(d) Shellstock shall be stored at temperatures and by methods in accordance with 15A NCAC 18A .0427. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(e) After each container of shellstock has been emptied, the management shall remove the tag and retain it for a period of at least 90 days.

(f) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the resident camp holds a valid shellfish shucking permit.

(g) Shellstock washing facilities shall consist of a mechanical shellfish washer, or a sink or slab with catch basin, indirectly

drained into a sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(h) The cooking of shellfish shall be accomplished in an area meeting the requirements of the rules of this Section.

(i) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(j) All resident camps that prepare, serve, or sell raw shellfish shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

"Consumer Advisory

Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

(k) Cooked crustacea meat shall be held at 40° F or less.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3626 REFRIGERATION: THAWING: AND PREPARATION OF FOOD

(a) All potentially hazardous foods requiring refrigeration shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to ±2° F (±1°C) shall be provided in all refrigerators.

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

(c) Potentially hazardous foods shall be thawed:

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

(d) Anyone preparing food shall have used anti-bacterial soap, dips or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Section .3600 of these Rules. Food shall be prepared with the least possible manual contact, with suitable utensils and preparation surfaces that have been cleaned and rinsed prior to use. Preparation surfaces that come in contact with potentially hazardous foods shall be sanitized as provided in Rule .3629 of this Section. Raw fruits and raw

vegetables shall be thoroughly washed with potable water before being cooked or served.

(e) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 145° F (63° C) except as follows:

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

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

(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 135° F (57° C). Reheating time shall not exceed two hours.

(h) All potentially hazardous foods, except rare roast beef, shall be stored at temperatures of 135° F (57° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. Rare roast beef shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

(i) Time only, rather than the temperature requirements set forth in Paragraph (h) of this Rule, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption if:

- (1) the food is marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;
- (2) the food is cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from required temperature control;
- (3) food in unmarked containers or packages or marked to exceed the four hour limit in Subparagraph (1) of this Paragraph, is discarded; and
- (4) written procedures approved by the Department, as being in accordance with these Rules, are maintained in the resident camp for the handling of food from the time of completion of the cooking process or when the food is otherwise removed from required temperature control.

These procedures shall be made available to the Department upon request.

(j) Time only, rather than temperature requirements as set forth in Paragraph (h) of this Rule, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for staff or camper take-out, if:

- (1) the food is marked or otherwise identified to indicate the time that is two hours past the point in time when the food is removed from temperature control;
- (2) the food is cooked and served, served if ready-to-eat, or discarded, within two hours from the point in time when the food is removed from required temperature control;
- (3) food in unmarked containers or packages or marked to exceed the two hour limit in Subparagraph (1) of this Paragraph, is discarded; and
- (4) written procedures approved by the Department, as being in accordance with these Rules, are maintained in the resident camp for the handling of food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control.

These procedures shall be made available to the Department upon request.

(k) A resident camp wishing to move foods controlled under Paragraphs (i) and (j) of this Rule for immediate consumption on the premises, shall have their written procedures for the handling of the food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control, approved by the Department, as being in accordance with these Rules, and shall maintain those approved procedures in the resident camp.

(l) In a resident camp that serves a highly susceptible population, time only, rather than temperature, may not be used as the public health control for raw eggs.

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

(n) A metal stem-type food thermometer accurate to ±2 ° F (±1° C) shall be available to check potentially hazardous food temperatures.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3627 RE-SERVING OF FOOD

Food once served to a consumer shall not be served again and not left for the next consumer. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3628 FOOD SERVICE UTENSILS AND EQUIPMENT

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

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

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

(d) Equipment shall meet ANSI sanitation standards, which are adopted by references in accordance with G.S. 150B-14(c). If equipment is not listed by an ANSI accredited education service program, the owner or operator shall submit documentation to the Department that demonstrates that the equipment is at least equivalent to ANSI sanitation standards. In doing so, if the components of the equipment are the same as those meeting ANSI sanitation standards, then the Department shall deem the equipment equivalent. For purposes of the rules of this Section, toasters, mixers, microwave ovens, hot water heaters and hoods shall not be considered to be equipment and shall not be required to meet ANSI sanitation standards. Existing equipment excluding dishwashing facilities not in compliance with this Rule must be brought into compliance by May 1, 2012.

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

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3629 CLEANING OF EQUIPMENT AND UTENSILS

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

(b) All multi-use eating and drinking utensils shall be thoroughly washed, rinsed and subjected to a bactericidal treatment after each usage as specified in Paragraph (c) of this Rule.

(c) In a hand dishwashing operation, after cleaning and rinsing, all multi-use eating and drinking utensils shall be subjected to one of the following or other equivalent bactericidal processes:

- (1) Immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to ±2° F (±1° C) shall be available and convenient to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided.

The heating device may be integral with the immersion compartment.

- (2) Immersion for at least two minutes in the third compartment in a chemical bactericide of strength approved by the Department:

- (A) for chlorine products, a solution containing at least 50 ppm of available chlorine at a temperature of at least 75° F (24° C);

- (B) for iodophor products, a solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0 and having a temperature of at least 75° F (24° C); and

- (C) for quaternary ammonium products, a solution containing at least 200 ppm of QAC and having a temperature of at least 75° F (24° C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

- (3) Other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions" from the "Food Service Sanitation Manual" published by the U.S. Food and Drug Administration. 21 CFR 178.1010 is adopted by reference in accordance with G.S. 150B-14(c).

(d) A suitable testing method or equipment shall be available, convenient and regularly used to test chemical sanitizers to ensure minimum prescribed strengths.

(e) The supply of eating and drinking utensils shall be of sufficient quantity to allow washing, rinsing, sanitizing and air-drying before reuse. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking or serving of food or drink shall be cleaned and rinsed immediately after the day's operations, after each use or upon completion of each meal as indicated. Pizza pans and similar type pans (not used for table service) that are continually subjected to high temperatures do not require cleaning after each use or day's use but shall be kept clean and maintained in good repair.

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

spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils.

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

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

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

(j) When warewashing machines are used, the machines shall be approved as sufficient for size, capacity and type for the number of utensils to be washed. Glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for final rinse and bacterial treatment. For this method, a motor-driven glass-washer and a single-vat sink shall suffice.

(k) Warewashing machines shall render equipment clean to sight and touch and provide bactericidal treatment in accordance with Paragraph (c) of this Rule.

(l) When only single-service eating and drinking utensils are used, at least an approved two-compartment sink shall be provided. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drain boards that are an integral part of and continuous with the sink. These drain boards shall be of sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drain board, overhead or wall mounted shelf or with the use of stationary or portable racks.

(m) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of dishwashing machines and other food service and cleaning needs. Hot water storage tanks shall

provide a minimum of 130° F (54° C) hot water when water is not used for sanitizing; when hot water is used for sanitizing, a minimum storage temperature of 140° F (60° C) hot water is required.

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

(o) In determining the sufficiency of the size of drain boards, machine dishwashers and sinks in a resident camp, the environmental health specialist shall consider the number and size of multi-use utensils regularly cleaned. For drain boards only, the specialist shall also consider the available shelf space, racks and other areas that may be used for air-drying.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3630 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT

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

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

(c) Spoons, spatulas, dippers, and other in-use utensils shall be stored between uses in the food product with the handles extending out of the food, stored dry on a clean surface or in a container of water if the water is maintained at a temperature of at least 140F.

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

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

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3631 FOOD SERVICE AREA STORAGE SPACES

(a) Storage spaces shall be kept clean. The contents shall be neatly arranged to facilitate cleaning.

(b) All items stored in rooms where food or single-service items are stored shall be at least 12 inches (30.48 cm.) above the floor when placed on stationary storage units or six inches (15.24 cm.) above the floor when placed on portable storage units or

otherwise arranged to permit thorough cleaning. For purposes of this Rule, the term "portable" does not require wheels.

(c) Shelves in storage rooms where food or single-service items are stored shall be constructed approximately one inch (2.54 cm.) from the wall, unless stripped or caulked.

(d) Bulky items shall be stored on slatted shelves or movable dollies.

(e) Nothing in this Rule shall prohibit the use of non-absorbent wooden shelves that are in good repair in dry storage areas.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3632 FOOD SERVICE AREA LIGHTING

(a) All areas in which food is prepared, or in which utensils are washed, shall be provided with at least 50 foot-candles of light on food preparation work levels and at utensil washing work levels. At least 10 foot-candles of light at 30 inches above the floor shall be provided in all other areas, including storage rooms and walk-in units. This shall not include dining areas except during cleaning operations. Fixtures shall be kept clean and in good repair.

(b) In determining whether the lighting at a particular location meets the requirements of this Rule, the Environmental Health Specialist shall take the measurement with the light meter at the level where work is performed or at 30 inches above the floor if not at a work station identified in Paragraph (a) of this Rule. The Environmental Health Specialist shall place the meter on the surface where the measurement is to be taken and shall not obstruct the path of the light to the surface in question. Instruments used to measure lighting shall be maintained and operated by the Environmental Health Specialist in accordance with the manufacturer's instructions as to ensure their accuracy.

(c) Light bulbs in food preparation, storage and display areas shall be shatterproof or shielded to preclude the possibility of broken bulbs or lamps falling into food. Shatterproof or shielded bulbs need not be used in food storage areas where the integrity of the unopened packages will not be affected by broken glass falling onto them and the packages, prior to being opened, are capable of being cleaned.

(d) Heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3633 FOOD SERVICE AREA VENTILATION

Ventilation equipment shall be kept clean and in good repair.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3634 FOOD SERVICE AREA LAVATORY FACILITIES

(a) Lavatory facilities, including hot and cold running water and a combination supply faucet or tempered water and sanitary towels or approved hand-drying devices and soap, shall be provided for staff and campers in food preparation and utensil washing areas.

(b) For employees, at least one lavatory shall be provided in the kitchen area in addition to any lavatories that may be provided in employees' toilet rooms.

(c) Dishwashing sinks, vegetable sinks and pot sinks shall not be used as handwashing facilities.

(d) The lavatories shall be kept clean and in good repair.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3635 FOOD SERVICE AREA TOILET FACILITIES

(a) Unless specified elsewhere in these Rules, every camp kitchen shall be provided with toilet facilities located within 500 feet and readily accessible to employees and campers during all operational hours. Toilets for campers shall be so located that the campers do not pass through the kitchen to enter the toilet rooms. Intervening rooms or vestibules, if provided, shall be constructed and maintained in accordance with this Rule. Floors and walls shall be constructed of non-absorbent, washable materials. Floors, walls and ceilings shall be kept clean and in good repair.

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

(c) Toilet rooms shall be provided with self-closing doors and kept free of flies. Windows shall be screened if used for ventilation. Toilet rooms shall not be used for storage of food, utensils or equipment. Self-closing doors are not required for toilet rooms that open into the interior of a building and the exterior doors of the building are self-closing.

(d) Fixtures shall be kept clean and in good repair.

(e) All wastewater shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3636 FOOD SERVICE AREA FLOORS

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

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

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

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

(d) Floors, which are subjected to flood type cleaning, shall be provided with floor drains and shall slope to drain.

(e) Clean carpet, in good repair, may be used in dining areas.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3637 FOOD SERVICE AREA WALLS AND CEILINGS

(a) Walls and ceilings of all rooms in which food is stored, handled, prepared or served or in which utensils are washed or stored shall be kept clean and in good repair. Water stains on walls or ceilings do not constitute a violation of this Rule unless mold or mildew is present.

(b) The walls of kitchens and other rooms used for the preparation of food and the washing of utensils shall be smooth, washable and be kept clean. Acceptable wall materials include but are not limited to: glazed tile; fiberglass reinforced panels, stainless steel, wood or metal; wall board painted with washable, non-absorbent paint; and brick, cinder blocks, slag blocks or concrete blocks, if glazed, tiled, plastered or filled to provide a smooth surface. Ceilings in kitchens and other rooms used for the preparation of food or the washing of utensils shall be washable. Acceptable materials include, but are not limited to, perforated or non-perforated vinyl faced acoustical tile, and fiberglass reinforced panels and painted wallboard.

(c) The walls and ceilings of the dining rooms and other food serving rooms shall be of sound construction.

(d) The walls and ceilings of dry storage rooms shall be of sound construction; however, a washable finish is not required.

(e) The walls and ceilings of the wait stations that prepare beverages and bars that only prepare beverages and wash utensils with no food preparation other than garnishes for drinks shall be of sound construction, provided the interior walls of these wait stations and bars shall be finished to be smooth and washable.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3638 KITCHEN PREMISES: MISCELLANEOUS

(a) None of the operations shall be conducted in any room used for domestic purposes. A domestic kitchen shall not be used in connection with the operation of a camp.

(b) Packout or trip kitchens where food is portioned and stored for cookouts or overnight trips, where utensils and equipment are not returned to a central kitchen for cleaning, and are not located in the same building as a camp kitchen, shall be equipped with at least a two-compartment sink with 24-inch drainboards or countertop space at each end for handling dirty items and air drying clean items. Sinks shall be of sufficient size to submerge, wash, rinse and sanitize utensils and equipment. Any area where food is portioned shall also be equipped with a separate handwash lavatory with a hot and cold mixing faucet, soap and individual towels or hand-drying device.

(c) Residential style educational activity kitchens with domestic utensils and equipment may be used by groups of 32 or less

campers and staff to prepare meals only for members of the group. Field sanitation measures of Rule .3619 may be used in these facilities.

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

(e) Toxic materials, cleaners, sanitizers or similar products used in a camp shall be labeled with the common name or manufacturer's label.

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

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

(h) The premises under control of the management shall be kept free of items that provide fly or mosquito breeding places or rodent harborages. Effective measures such as fly repellent fans, self-closing doors, screens and routine use of approved pesticides shall be taken to keep insects, rodents, animals and other public health pests out of the camp kitchen and food service area storage spaces.

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

- (1) fish or crustacea in aquariums or display tanks;
- (2) patrol dogs accompanying police or security officers in offices and dining, sales and storage areas; and
- (3) service animals accompanying persons with disabilities in areas that are not used for food preparation.

Authority G.S. 130A-235; 130A-248.

15A NCAC 18A .3639 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE

(a) If a permit holder disagrees with a decision of an environmental health specialist on the interpretation, application or enforcement of the rules of this Section, the permit holder may:

- (1) request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or
- (2) initiate an appeal in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating an appeal in accordance with G.S. 150B.

(c) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall briefly state the issues in dispute. In the event the inspection giving rise to the informal review was conducted by the environmental health supervisor in the county or area where the resident camp is

located, or when the county or area has only one environmental health specialist assigned to inspect resident camps, the regional environmental health specialist assigned to that county or area shall conduct the local informal review. As soon as possible but at least within 30 days of receipt of the request, the person conducting the review shall contact the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the resident camp in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(d) Following receipt of the written decision of the environmental health supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the State. Notice of such appeal shall be in writing, shall include a copy of the environmental health supervisor's or her or his representative's decision and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated informal review officer shall hold a conference in Wake County. Notice of the time and place of this conference shall be provided to the permit holder and the environmental health supervisor for the county or area where the issue arose. Within ten days following the date of the conference, the informal review officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the resident camp in question unless modified pursuant to Paragraph (g) of this Rule or by the State Health Director.

(e) If the decision on appeal at the local or state level results in a change in the score resulting from an inspection of a resident camp, the environmental health specialist shall post a new grade card reflecting that new score.

(f) Appeals of the decision of the designated informal review officer shall be in accordance with G.S. 150B.

(g) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .3605 of this Section.

Authority G.S. 130A-235; 130A-248.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 25 – INTERPRETER AND TRANSLITERATOR BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Interpreter and Transliterators Licensing Board intends to adopt the rules cited as 21 NCAC 25 .0210, .0502 - .0506, .0701 - .0703 and amend the rules cited as 21 NCAC 25 .0205, .0209, .0501.

Proposed Effective Date: March 1, 2007

Public Hearing:

Date: December 8, 2006

Time: 5:00 p.m.

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

Reason for Proposed Action:

21 NCAC 25 .0210, .0701- .0703 – These rules were drafted to implement changes made to the licensing law by NC Session Law 2005-299.

21 NCAC 25 .0205, .0209, .0501, .0504 - .0505 - These rules were drafted in response to issues that have arisen since the Board first began to issue licenses in the summer of 2005.

21 NCAC 25 .0502 – prorates the continuing education requirements applicable to new licensees.

21 NCAC 25 .0503 – provides, among other things, for a one-month grace period for licensees who have not met the continuing education requirements in Rules .0501 and .0502.

21 NCAC 25 .0506 – permits licensees to receive continuing education credits for continuing education courses approved by other statutory licensing boards.

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

A person may object to any one or more of the proposed rules by mailing his or her written objection to the NC Interpreter and Transliterators Licensing Board at PO Box 1632, Garner, NC 27529.

Comments may be submitted to: NC Interpreter and Transliterators Licensing Board, Attn. Laurie Shaw, Executive Secretary, PO Box 1632, Garner, NC 27529, phone (919) 779-5709, fax (919) 779-5642, email contact@ncitlb.org

Comment period ends: January 2, 2007

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 – LICENSING

21 NCAC 25 .0205 RENEWAL OF A PROVISIONAL LICENSE

(a) An application for the renewal of a provisional license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.

(b) If a licensee does not timely file an application for the renewal of a provisional license, the licensee shall not practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives a either a renewed provisional license or an initial full license.

(c) An application to renew an expired provisional license must be received by the Board within one year after the provisional license expired. A provisional license shall not be renewed after it has expired a second time.

~~(d)~~ If the license being renewed has been suspended by the Board, any renewal license issued to the applicant shall be suspended as well until the term of the suspension has expired.

~~(e)~~ The Board may, in its discretion, renew a provisional license a fourth or fifth time if the applicant demonstrates to the Board's satisfaction that the applicant's progress toward full licensure was delayed by:

- (1) a life-altering event, such as an acute or chronic illness suffered by either the applicant or a member of the applicant's immediate family;
- (2) active military service; or
- (3) a catastrophic natural event, such as a flood, hurricane, or tornado.

~~(f)~~ The Board shall not for any reason renew a provisional license for a sixth time.

~~(g)~~ The Board shall not issue an initial provisional license to anyone who has previously held a provisional license.

Authority G.S. 90D-6; 90D-8; 90D-11; 90D-12.

21 NCAC 25 .0209 PERSONS WHO ARE INELIGIBLE TO APPLY FOR A LICENSE

(a) Any person who violates G.S. 90D-4(a) shall be ineligible for licensure for a period of up to two years following the last date on which the person violated G.S. 90D-4(a).

~~(b)~~ Any person whose license application is denied by the Board on the ground that the person gave false information to, or withheld information from, the Board while seeking a license shall be ineligible for licensure for a period of two years following the denial.

~~(c)~~ Any person whose license is revoked by the Board on any grounds other than G.S. 90D-12(5) shall be ineligible for licensure for a period of two years following the revocation.

~~(d)~~ Any person whose license has been revoked pursuant to G.S. 90D-12(5) for failing to pay child support after having been ordered to do so by a court of competent jurisdiction, or for failing to comply with a subpoena issued pursuant to a child

support or paternity establishment proceeding, shall be ineligible to apply for a new license until the Board receives a certification from the appropriate clerk of court that the person is no longer delinquent in child support payments or that the person has complied with, or is no longer subject to, the subpoena.

Authority G.S. 50-13.12; 90D-6; 90D-12.

21 NCAC 25 .0210 TIME-LIMITED, NONRESIDENT EXEMPTION

(a) Nonresident persons who are nationally certified by the National Association of the Deaf, the National Cued Speech Association, or the Registry of Interpreters for the Deaf, Inc. are exempt from licensure so long as that they provide interpreting or transliterating services in this State for no more than 20 days during any single calendar year.

(b) For the purposes of this Rule, each partial day of interpreting or transliterating shall be counted as a full day.

(c) Upon the request of any person, a nonresident providing interpreting or transliterating services under this exemption shall provide evidence of his or her certification by the National Association of the Deaf, the National Cued Speech Association, or the Registry of Interpreters for the Deaf, Inc.

Authority G.S. 90D-4(b)(6); S.L. 2005-299, s.1.

SECTION .0500 – CONTINUING EDUCATION

21 NCAC 25 .0501 CONTINUING EDUCATION REQUIREMENTS

(a) A licensee shall earn at least two continuing education units ("CEUs") each licensure year. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting. A traditional classroom setting is a setting in which three or more persons come together at the same location at the same time as a group to listen to a lecture, to view a demonstration, to participate in group discussions, or to learn through any combination of these or similar activities.

(b) Surplus CEUs shall not be carried forward from the licensure year in which they were earned to any subsequent licensure year.

~~(c) A licensee may earn CEUs by enrolling in and completing a class or course sponsored by a college or university accredited by the Southern Association of Colleges and Schools or by any other accrediting agency recognized by the U.S. Department of Education. In order to receive CEU credit for the class or course, the licensee must authorize and direct the sponsoring college or university to mail to the Board a certified transcript documenting that the licensee completed the class or course and that the licensee earned at least a 2.0 grade point average in the class or course.~~

~~(d) A licensee may earn CEUs by attending workshops and conferences approved by The Registry of Interpreters for the Deaf, Inc. ("RID"). In order to receive CEU credit for attendance at a workshop or conference approved by RID, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of~~

CEUs earned by attendance at an RID approved workshop or conference.

(e) A licensee may earn CEUs by independently studying instructional materials in any format including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been approved by RID. In order to receive CEU credit for such independent study, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by the completion of any independent study approved by RID.

(f) If a licensee does not have an RID CEU transcript because the licensee is neither a certified member of RID nor an associate member of RID who is participating in the Associate Continuing Education Tracking ("ACET") Program, the licensee may receive CEU credit for attendance at an RID approved workshop or conference or for completion of an RID approved course of independent study by submitting to the Board a certificate of completion signed by the CE sponsor, provider, or presenter.

(g)(c) A licensee may not earn CEUs while interpreting, whether or not the licensee is compensated for his or her services.

Authority G.S. 90D-6; 90D-8; 90D-11.

21 NCAC 25 .0502 PRORATION OF CONTINUING EDUCATION REQUIREMENTS

The CEU requirements specified in Rule.0501 of this Chapter shall be prorated as follows during a licensee's initial licensure year:

- (1) If the licensee receives his or her initial license in the months of October, November or December, the licensee shall be required to earned at least 2.0 CEUs by the following October 1. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting;
- (2) If the licensee receives his or her initial license in the months of January, February, or March, the licensee shall be required to earned at least 1.5 CEUs by the following October 1. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting;
- (3) If the licensee receives his or her initial license in the months of April, May, or June, the licensee shall be required to earned at least 1.0 CEUs by the following October 1. At least 0.5 of those CEUs shall be earned in professional studies and at least 0.5 of those CEUs shall be earned in a traditional classroom setting;
- (4) If the licensee receives his or her initial license in the months of July, August, or September, the licensee shall be required to earned at least 0.5 CEUs by the following October 1. At least 0.5 of those CEUs shall be earned in

professional studies and at least 0.5 of those CEUs shall be earned in a traditional classroom setting.

Authority G.S. 90D-6; 90D-8; 90D-11.

21 NCAC 25 .0503 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS

(a) A licensee who has not complied with the continuing education requirements in this Section shall be ineligible for license renewal. Any person whose license renewal application is denied on these grounds may reapply for licensure as soon as the person is able to demonstrate that:

- (1) the person has earned at least two CEUs within the 12 months next preceding the date of reapplication;
- (2) at least 1.0 of those CEUs was earned in professional studies; and
- (3) at least 1.0 of those CEUs was earned in a traditional classroom setting.

(b) Notwithstanding the provisions of Paragraph (a) of this Rule, a licensee who has not complied with the continuing education requirements in this Section shall be eligible for license renewal if:

- (1) the licensee makes a timely application for renewal, including the payment of the required license fee; and
- (2) the licensee earns the required CEUs by no later than the 31st day of October in the new licensure year.

(c) CEUs earned in the current licensure year and used to cure a deficiency in the prior licensure year may not be used to meet the CEU requirements of the current year.

Authority G.S. 90D-6; 90D-8; 90D-11.

21 NCAC 25 .0504 CEU CREDIT FOR COLLEGE COURSES

A licensee may earn CEUs by enrolling in and completing a class or course sponsored by a college or university accredited by the Southern Association of Colleges and Schools or by any other accrediting agency recognized by the U.S. Department of Education. In order to receive CEU credit for the class or course, the licensee must authorize and direct the sponsoring college or university to mail to the Board a certified transcript documenting that the licensee completed the class or course and that the licensee earned at least a 2.0 grade point average in the class or course.

Authority G.S. 90D-6; 90D-8; 90D-11.

21 NCAC 25 .0505 CEU CREDIT FOR WORKSHPS, CONFERENCES, AND INDEPENDENT STUDY RECOGNIZED BY RID

(a) A licensee may earn CEUs by attending workshops and conferences recognized by The Registry of Interpreters for the Deaf, Inc. ("RID"). In order to receive CEU credit for attendance at a workshop or conference recognized by RID, the licensee must submit to the Board a copy of the licensee's RID

CEU transcript. RID shall be the sole judge of the number of CEUs earned by attendance at the workshop or conference.

(b) A licensee who is either a certified member of RID or an associate member of RID participating in the Associate Continuing Education Tracking ("ACET") Program may earn CEUs by independently studying instructional materials in any format -- including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been recognized by RID. In order to receive CEU credit for such independent study, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by the completion of any independent study recognized by RID.

(c) If a licensee does not have an RID CEU transcript because the licensee is neither a certified member of RID nor an associate member of RID participating in the ACET Program, the licensee may receive CEU credit for attendance at the workshop or conference by submitting to the Board:

- (1) a certificate of completion signed by the workshop or conference sponsor, provider, or presenter; and
- (2) a copy of the advertisement or flyer that shows that attendance at the workshop or conference qualifies for RID CEUs.

Authority G.S. 90D-6; 90D-8; 90D-11.

21 NCAC 25 .0506 CEU CREDIT FOR WORKSHOPS, CONFERENCES, AND INDEPENDENT STUDY APPROVED BY OTHER STATUTORY PROFESSIONAL LICENSING BOARDS

(a) A licensee may earn CEUs by attending workshops and conferences approved by other statutory professional licensing boards. In order to receive CEU credit for attendance at such workshops and conferences, the licensee must submit to the Board written evidence that the workshop or conference was approved by another statutory professional licensing board and that the licensee attended the workshop or conference. The mandatory professional licensing board that approves the workshop or conference shall be the sole judge of the number of CE hours that may be earned by attendance at the workshop or conference.

(b) A licensee may earn CEUs by independently studying instructional materials in any format -- including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been approved for CE credit by another statutory professional licensing board. In order to receive CEU credit for such independent study, the licensee must submit to the Board written evidence that the independent study was approved by another statutory professional licensing board and that the licensee satisfactorily completed the independent study. The statutory professional licensing board that approves the independent study shall be the sole judge of the number of CE hours that may be earned by completion of the independent study.

Authority G.S. 90D-6; 90D-8; 90D-11.

SECTION .0700 – SANCTIONS

21 NCAC 25 .0701 SCHEDULE OF PENALTIES

(a) The first time the Board assesses a penalty against a person for a violation of a licensing statute or law, the presumptive penalty shall be one hundred dollars (\$100.00).

(b) The second time the Board assesses a penalty against a person for a violation of the same licensing statute or law, the presumptive penalty shall be two hundred dollars (\$200.00).

(c) The third time the Board assesses a penalty against a person for a violation of the same licensing statute or law, the presumptive penalty shall be four hundred dollars (\$400.00).

(d) The fourth time the Board assesses a penalty against a person for a violation of the same licensing statute or law, and every time thereafter, the presumptive penalty shall be eight hundred dollars (\$800.00).

Authority G.S. 90D-14(c); S.L. 2005-299, s.4.

21 NCAC 25 .0702 EVALUATION OF MITIGATING AND AGGRAVATING FACTORS

(a) If the Board finds that mitigating factors outweigh aggravating factors, the Board may assess a penalty that is less than the presumptive penalty.

(b) If the Board finds that aggravating factors outweigh mitigating factors, the Board may assess a penalty that is more than the presumptive penalty, provided that no single penalty for any single violation shall exceed one thousand dollars (\$1,000).

(c) If the Board assesses a penalty that is more or less than the presumptive penalty, the Board shall state its reasons for doing so. The Board need not state its reasons for assessing the presumptive penalty.

Authority G.S. 90D-14(c); S.L. 2005-299, s.4.

21 NCAC 25 .0703 IDENTIFICATION OF SEPARATE OFFENSES

(a) Each offer by an unlicensed person to practice as an interpreter or transliterator for a fee or other consideration shall constitute a separate violation for which a separate penalty may be assessed.

(b) Each representation by an unlicensed person that such person is a licensed interpreter or transliterator shall constitute a separate violation for which a separate penalty may be assessed.

(c) Each time an unlicensed person uses the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator shall constitute a separate violation for which a separate penalty may be assessed.

(d) An advertisement that violates Paragraphs (a), (b), or (c) of this Rule shall constitute a single violation each day it is published.

(e) Each interpreting or transliterating engagement that violates a licensing statute or rules shall constitute a separate violation for which a separate penalty may be assessed.

(f) Each day a violation persists shall constitute a separate violation for which a separate penalty may be assessed.

Authority G.S. 90D-14(c); S.L. 2005-299, s.4.

CHAPTER 46 - BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rule(s) cited as 21 NCAC 46 .1505, .1507.

Proposed Effective Date: March 1, 2007

Public Hearing:

Date: November 20, 2006

Time: 5:00 p.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: To delete the practical examination requirement because the national examination, which includes the North American Pharmacist Licensure Examination and the Multistate Pharmacy Jurisprudence Examination, sufficiently tests the skills and knowledge necessary to ensure safe entry into the profession of pharmacy.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections regarding the proposed rule changes to Jay Campbell, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Comments may be submitted to: Jay Campbell, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517.

Comment period ends: January 1, 2007

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 .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

21 NCAC 46 .1505 EXAMINATION

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

Authority G.S. 90-85.15; 90-85.16.

21 NCAC 46 .1507 PARTIAL EXAMINATION

Candidates who are found to be eligible for admission to the examinations in all respects except that of practical experience or age or both, may be admitted to all divisions of the examinations except the examination in practical pharmacy. Such a candidate may later take the practical examination when the experience requirement has been satisfied. specified in 21 NCAC 46 .1505.

Authority G.S. 90-85.6; 90-85.15; 90-85.16.

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting September 21, 2006 and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

| APPROVED RULE CITATION | | | | REGISTER CITATION TO THE NOTICE OF TEXT |
|-------------------------------|------|-----|--------------|--|
| 10A | NCAC | 13D | .2309* | 20:18 NCR |
| 10A | NCAC | 13J | .0906* | 20:18 NCR |
| 10A | NCAC | 13J | .1001* | 20:18 NCR |
| 10A | NCAC | 13J | .1003 | 20:23 NCR |
| 10A | NCAC | 13J | .1107* | 20:18 NCR |
| 10A | NCAC | 13O | .0201-.0202* | 20:18 NCR |
| 10A | NCAC | 27G | .3803 | 20:24 NCR |
| 10A | NCAC | 27I | .0601-.0605 | 20:20 NCR |
| 10A | NCAC | 27I | .0606* | 20:20 NCR |
| 10A | NCAC | 27I | .0607-.0609 | 20:20 NCR |
| 10A | NCAC | 39A | .0109 | 20:19 NCR |
| 10A | NCAC | 41A | .0101 | 20:22 NCR |
| 10A | NCAC | 43H | .0111 | 20:24 NCR |
| 10A | NCAC | 45A | .0403 | 20:19 NCR |
| 10A | NCAC | 48A | .0101 | 20:21 NCR |
| 10A | NCAC | 48A | .0102* | 20:21 NCR |
| 10A | NCAC | 48A | .0201-.0205 | 20:21 NCR |
| 10A | NCAC | 48B | .0101-.0102 | 20:21 NCR |
| 10A | NCAC | 48B | .0103* | 20:21 NCR |
| 10A | NCAC | 48B | .0201* | 20:21 NCR |
| 10A | NCAC | 48B | .0202-.0203 | 20:21 NCR |
| 10A | NCAC | 48B | .0301-.0303 | 20:21 NCR |
| 10A | NCAC | 48B | .0304* | 20:21 NCR |
| 10A | NCAC | 48B | .0305 | 20:21 NCR |
| 10A | NCAC | 48B | .0401* | 20:21 NCR |
| 10A | NCAC | 48B | .0402 | 20:21 NCR |
| 10A | NCAC | 48B | .0501-.0503 | 20:21 NCR |
| 10A | NCAC | 48B | .0601-.0602 | 20:21 NCR |
| 10A | NCAC | 48B | .0701 | 20:21 NCR |
| 10A | NCAC | 48B | .0702* | 20:21 NCR |
| 10A | NCAC | 48B | .0703 | 20:21 NCR |
| 10A | NCAC | 48B | .0801* | 20:21 NCR |
| 10A | NCAC | 48B | .0802-.0804 | 20:21 NCR |
| 10A | NCAC | 48B | .0901-.0904 | 20:21 NCR |
| 10A | NCAC | 48B | .1001 | 20:21 NCR |
| 10A | NCAC | 48B | .1101-.1102 | 20:21 NCR |
| 10A | NCAC | 48B | .1201-.1203 | 20:21 NCR |
| 10A | NCAC | 48B | .1204* | 20:21 NCR |
| 10A | NCAC | 48B | .1301* | 20:21 NCR |
| 10A | NCAC | 48B | .1302 | 20:21 NCR |
| 10A | NCAC | 48B | .1303-.1306* | 20:21 NCR |
| 10A | NCAC | 48B | .1307-.1308 | 20:21 NCR |
| 11 | NCAC | 05A | .0101* | 20:16 NCR |
| 11 | NCAC | 05A | .0103 | 20:16 NCR |
| 11 | NCAC | 05A | .0301* | 20:16 NCR |

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|-----|------|-----|--------------|--------------------------|
| 11 | NCAC | 05A | .0302 | 20:16 NCR |
| 11 | NCAC | 05A | .0501* | 20:16 NCR |
| 11 | NCAC | 05A | .0503 | 20:16 NCR |
| 11 | NCAC | 05A | .0504-.0508* | 20:16 NCR |
| 11 | NCAC | 05A | .0510-.0512* | 20:16 NCR |
| 11 | NCAC | 10 | .0801-.0804 | 20:24 NCR |
| 11 | NCAC | 10 | .0806 | 20:24 NCR |
| 11 | NCAC | 10 | .0901-.0903 | 20:24 NCR |
| 11 | NCAC | 10 | .0906-.0907 | 20:24 NCR |
| 11 | NCAC | 10 | .1701-.1702 | 20:24 NCR |
| 15A | NCAC | 10D | .0103* | n/a G.S. 150B-21.5(a)(5) |
| 15A | NCAC | 18C | .1523 | 20:20 NCR |
| 16 | NCAC | 06D | .0305* | 20:14 NCR |
| 21 | NCAC | 14H | .0112-.0113 | 20:19 NCR |
| 21 | NCAC | 14H | .0120* | 20:19 NCR |
| 21 | NCAC | 16M | .0102 | 20:24 NCR |
| 21 | NCAC | 32B | .0105* | 20:14 NCR |
| 21 | NCAC | 32B | .0106 | 20:14 NCR |
| 21 | NCAC | 32B | .0312 | 20:14 NCR |
| 21 | NCAC | 32B | .0314 | 20:14 NCR |
| 21 | NCAC | 54 | .2006* | 20:21 NCR |
| 23 | NCAC | 02C | .0209* | 20:20 NCR |
| 23 | NCAC | 02E | .0204* | 20:20 NCR |
| 25 | NCAC | 01C | .0601 | 20:14 NCR |
| 25 | NCAC | 01C | .0903 | 20:14 NCR |
| 25 | NCAC | 01J | .0801-.0802 | 20:14 NCR |
| 25 | NCAC | 01J | .0805 | 20:14 NCR |

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b)(2))

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|-----|------|-----|-------------|-----------|
| 10A | NCAC | 26E | .0601-.0602 | 20:24 NCR |
| 10A | NCAC | 26E | .0603* | 20:24 NCR |

These rules are subject to the next Legislative Session. (See S.L. 2002-167, s.3.(c))

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|-----|------|-----|--------|-----------|
| 15A | NCAC | 02E | .0611* | 20:13 NCR |
|-----|------|-----|--------|-----------|

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13D .2309 CARDIO-PULMONARY RESUSCITATION

- (a) Each facility shall develop and implement a Cardio-Pulmonary Resuscitation (CPR) policy.
- (b) The policy shall be communicated to all residents or their responsible party prior to admission.
- (c) Upon admission each resident or his or her responsible party must acknowledge in writing having received a copy of the policy.
- (d) The policy shall designate an outside emergency medical service provider to be immediately notified whenever an emergency occurs.
- (e) The policy shall designate the level of CPR that is available using terminology defined by the American Heart Association. American Heart Association terminology is as follows:

- (1) Heartsaver CPR;
- (2) Heartsaver Automatic External Defibrillator (AED);
- (3) Basic Life Support (BLS); or

- (4) Advanced Cardiac Life Support (ACLS).
- (f) The facility shall maintain staff on duty 24 hours a day trained by someone with valid certification from the American Heart Association or American Red Cross capable of providing CPR at the level stated in the policy. The facility shall maintain a record in the personnel file of each staff person who has received CPR training.
- (g) The facility shall have equipment readily available as required to deliver services stated in the policy.
- (h) The facility shall provide training for staff members who are responsible for providing CPR with regards to the location of resources and measures for self- protection while administering CPR.

History Note: Authority G.S. 131E-104; Eff. October 1, 2006.

10A NCAC 13J .0906 COMPLIANCE WITH LAWS

- (a) The agency shall be in compliance with all applicable federal, state, and local laws, rules, and regulations including Title XI Part A Section 1128B of the Social Security Act - Criminal penalties for acts involving Federal health care

programs. A failure to comply with Federal law may subject the agency to civil or criminal penalties as set forth in 42 U.S.C. §1320a-7a - Making or causing to be made false statements or representations - and 42 U.S.C. §1320a-7b - Illegal remunerations.

(b) Staff of the agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.

(c) Nothing in this Rule shall prohibit the Department from conducting inspections as provided for in Rule .0904 of this Section.

(d) Any agency deemed to be in compliance by virtue of accreditation by one of the specified accrediting bodies listed in G.S. 131E-138(g) shall submit to the Department a copy of its accreditation report within 30 days after the agency receives its report each time it is surveyed by the accrediting body. The agency shall notify the Department of any action taken that affects its accreditation status, either temporarily or permanently. The Department may conduct annual validation surveys to assure compliance.

History Note: Authority G.S. 131E-138; 131E-140; Eff. July 1, 1992; Amended Eff. October 1, 2006; February 1, 1996.

10A NCAC 13J .1001 AGENCY MANAGEMENT AND SUPERVISION

(a) The governing body or its designee shall establish and implement written policies governing agency operation. Such policies shall be available for inspection by the Department. The policies shall include:

- (1) a description of the scope of services offered;
- (2) admission and discharge policies;
- (3) supervision of personnel;
- (4) development of, and updates to, the plan of care;
- (5) management of emergency care situations in the home;
- (6) time frame for completion and return of service records to the agency;
- (7) personnel qualifications;
- (8) an organizational chart;
- (9) program evaluation;
- (10) employee and client confidentiality; and
- (11) coordination of and referral to and from other community agencies and resources.

(b) The agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the agency and shall meet one or more of the following qualifications:

- (1) a health care practitioner as defined in G.S. 90-640(a);
- (2) an individual who has at least two years of supervisory or management experience in home care or any other provider licensed pursuant to G.S. 131E or G.S. 122C; or
- (3) an individual who holds a bachelor's degree in health, business or public administration science and has at least one year of

supervisory or management experience in home care or other licensed health care program.

Such qualifications do not apply with respect to persons acting in the capacity of agency director prior to October 1, 2006.

(c) The agency shall designate a person responsible for supervising each type of home care service contained in Section .1100 of this Subchapter that is provided by the agency either directly or by contract. This individual may be the supervisor for one or more home care services and may also serve as the agency director.

(d) There shall be written documentation that specifies the responsibilities and authority of the agency director and supervisor.

(e) If the position of agency director becomes vacant, the Department shall be notified within five working days in writing of such vacancy along with the name of the replacement, if available. Agency policies shall define the order of authority in the absence of the administrator.

(f) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .1111 of this Subchapter.

(g) An agency shall have written policies which identify the specific geographic area in which the agency provides each service. If an agency plans to expand its geographic service area without opening an additional site, the Department shall be notified in writing 30 days in advance.

History Note: Authority G.S. 131E-140; Eff. July 1, 1992; Amended Eff. October 1, 2006; February 1, 1996.

10A NCAC 13J .1107 IN-HOME AIDE SERVICES

(a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the in-home aide service level rules contained in 10A NCAC 06A and 10A NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing in-home aide services shall comply with the provisions in Paragraphs (b) and (c) of this Rule.

(b) If the client's plan of care requires the in-home aide to provide extensive assistance to a client who is totally dependent in the activity or requires substantial hands on care and physical support including more than guided maneuvering of limbs or weight bearing assistance, the in-home aide shall be listed on the Nurse Aide Registry pursuant to G.S. 131E-255. However, if the client's plan of care requires the in-home aide to provide only limited assistance to the client which includes hands-on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self monitoring of medications or other non weight bearing assistance, the in-home aide shall not be required to be listed on the Nurse Aide Registry. Agencies shall be in compliance with this Paragraph no later than October 1, 2007.

(c) In-home aides shall follow instructions for client care written by the health care practitioner required for the services provided. In-home aide duties may include the following:

- (1) help with prescribed exercises which the client and in-home aides have been taught by a health care practitioner licensed pursuant to G.S. 90;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
- (3) assist with ambulation;
- (4) assist client with self-administration of medications which are ordered by a physician or other person authorized by state law to prescribe;
- (5) perform incidental household services which are essential to the client's care at home; and
- (6) record and report changes in the client's condition, family situation or needs to an appropriate health care practitioner.

*History Note: Authority G.S. 131E-140;
Eff. July 1, 1992;
Amended Eff. October 1, 2006; February 1, 1996.*

**10A NCAC 130 .0201 MEDICATION AIDE
COMPETENCY EVALUATION**

- (a) A competency evaluation candidate shall be advised by the Department after successful completion of a North Carolina Board of Nursing approved medication aide training program and prior to the competency exam that upon successful completion of the competency exam the individual will be listed on the State's medication aide registry.
- (b) The competency exam shall include each course requirement specified in the North Carolina Board of Nursing's approved training program as provided for in 21 NCAC 36 .0403 and 21 NCAC 36 .0406.
- (c) The competency examination shall be administered and evaluated only by the Department or its agent.
- (d) A record of successful completion of the competency exam shall be included in the medication aide registry within 30 business days of successful completion of the evaluation.
- (e) If the competency exam candidate does not satisfactorily complete the exam, the candidate shall be advised by the Department of the areas which the individual did not pass.
- (f) Every competency exam candidate shall have the opportunity to take the exam three times before being required to retake and successfully complete the Medication Aide training program.

*History Note: Authority G.S. 131E-114.2(b); 131E-270;
Eff. October 1, 2006.*

**10A NCAC 130 .0202 REGISTRY OF MEDICATION
AIDES**

- (a) Prior to assigning medication aide duties to a Medication Aide, pursuant to G.S. 131E-114.2, the facility shall conduct a clinical skills validation for those medication administration tasks to be performed in the facility. This validation shall be conducted by a registered nurse consistent with his/her

occupational licensing law and who has a current unencumbered license to practice in North Carolina. A record of this validation shall be retained in the Medication Aide's file.

- (b) The Department shall provide information on the registry within one business day of the request for information.
- (c) The medication aide listing on the Medication Aide Registry shall be renewed every two years provided the individual has worked for a minimum of eight hours as a Medication Aide in each consecutive 24 month period following their initial listing.
- (d) The registry shall contain the following information for each individual who is listed on the Medication Aide Registry:
- (1) the individual's full name;
 - (2) the date the individual became eligible for placement on the registry;
 - (3) the training program and competency exam completed; and
 - (4) the date of listing renewal and expiration.

(e) The Medication Aide Registry shall remove entries for individuals who have not been employed as a medication aide for a minimum of eight hours in each consecutive 24 month period following initial listing.

(f) An individual who gains or attempts to gain registry listing by providing false or misleading information on listing or re-listing applications shall not be listed on the registry.

*History Note: Authority G.S. 131E-114.2(b); 131E-270;
Eff. October 1, 2006.*

**10A NCAC 26E .0603 REQUIREMENTS FOR
TRANSMISSION OF DATA**

(a) Each dispenser shall transmit to the Department the data as set forth in GS 90-113.73. The data shall be transmitted in the ASAP Telecommunication Format for Controlled Substances, published by the American Society for Automation in Pharmacy that is in use in the majority of states operating a controlled substance reporting system.

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

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

Each electronic transmission shall meet data protection requirements as follows:

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

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

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

(f) The dispenser does not have a computerized record keeping system.

- (1) The dispenser does not have a computerized record keeping system.

(2) The dispenser is unable to conform to the submission format required by the database administrator without incurring undue financial hardship.

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

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

History Note: Authority G.S. 90-113.70; 90-113.73; 90-113.76;
Eff. Pending Legislative Review.

10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL

(a) The Director shall convene a five member panel to conduct a hearing for an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.

(b) The panel members shall consist of the following:

- (1) a provider agency representative who meets the following requirements:
 - (A) the representative shall be from a provider agency that is not be a party to the appeal; and
 - (B) the representative shall have clinical expertise in the disability area pertinent to the appeal;
- (2) an employee of an area authority or county program who meets the following requirements:
 - (A) the employee shall be from an area authority or county program that is not a party to the appeal; and
 - (B) the employee shall have clinical expertise in the disability area pertinent to the appeal;
- (3) two individuals who are members of a consumer and family advisory committee who is not a party to the appeal; and
- (4) an employee of the Division.

(c) The employee of the Division shall serve as the chairperson of the panel and shall be a voting member in the case of a tie.

(d) The Director shall forward the record on appeal and all supplemental documentation to the chairperson of the panel within five days of receipt thereof.

(e) The Director shall provide a copy of applicable law and rules to the chairperson of the panel.

(f) The chairperson shall schedule a panel hearing including designation of a time and place.

(g) The chairperson shall notify the client, other panel members and the area authority or county program of the time and place no less than 15 calendar days prior to the date of the hearing.

History Note: Authority G.S. 143B-147;
Eff. October 1, 2006.

10A NCAC 48A .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Board" is defined in G.S 130A-2(1).
- (2) "Institute" means the North Carolina Institute for Public Health in the UNC School of Public Health.

History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006.

10A NCAC 48B .0103 ACCREDITATION REQUIREMENTS

(a) To receive an accreditation status of "accredited," a local health department must satisfy all of the accreditation standards contained in this Subchapter. In order to satisfy the accreditation standards, the local health department shall satisfy 33 of the 41 benchmarks. Two of the 33 benchmarks may come from any of the three standards listed below. 31 of the benchmarks shall be met according to the following proportions:

- (1) Standard 1. Agency core functions and essential services:
 - (A) The local health department must satisfy at least six of the benchmarks contained in Sections .0200 and .0300 of this Subchapter;
 - (B) The local health department must satisfy at least five of the benchmarks contained in Sections .0400 through .0600 of this Subchapter;
 - (C) The local health department must satisfy at least 11 of the benchmarks contained in Sections .0700 through .1100 of this Subchapter;
- (2) Standard 2. Facilities and administrative services: The local health department must satisfy at least three of the benchmarks contained in Section .1200 of this Subchapter; and
- (3) Standard 3. Board of health: The local health department must satisfy at least six of the benchmarks contained in Section .1300 of this Subchapter.

(b) In order to satisfy a benchmark, the local health department must carry out all of the activities prescribed for that benchmark. Failure to complete any activity associated with a benchmark means that the benchmark is not satisfied.

History Note: Authority G.S. 130A-34.1;
Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006.

10A NCAC 48B .0201 BENCHMARK 1

(a) Benchmark: A local health department shall conduct and disseminate results of regular community health assessments:

(b) Activities:

- (1) The local health department shall conduct a comprehensive community health assessment every 48 months. The community health assessment must fulfill each of the following requirements:
 - (A) Provide evidence of community collaboration in planning and conducting the assessment
 - (B) Reflect the demographic profile of the population
 - (C) Describe socioeconomic, educational and environmental factors that affect health
 - (D) Assemble and analyze secondary data (collected by someone other than the health department) to describe the health status of the community
 - (E) Collect and analyze primary data (collected by the health department) to describe the health status of the community
 - (F) Compile and analyze trend data to describe changes in community health status and in factors affecting health
 - (G) Use scientific methods for collecting and analyzing data
 - (H) Identify population groups at risk for health problems
 - (I) Identify existing and needed health resources
 - (J) Compare selected local data with data from other jurisdictions (e.g., local to state, local to local)
 - (K) Identify leading community health problems
- (2) The local health department shall update the community health assessment with an interim "State of the County's Health" report (or equivalent) annually. The report shall demonstrate that the local health department is tracking priority issues identified in the community health assessment, identifying emerging issues, and shall identify any new initiatives.
- (3) The local health department shall disseminate results of the most recent community health assessment and "State of the County's Health" report to individuals and groups that participated in the community health assessment process, community partners and the general population.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .0304 BENCHMARK 7

(a) Benchmark: The local health department shall maintain and implement epidemiological case investigation protocols providing for rapid detection and containment of communicable disease outbreaks; environmental health hazards; potential biological, chemical and radiological threats.

(b) Activities:

- (1) The local health department shall have epidemiological case investigation protocols in place.
- (2) The local health department shall conduct communicable disease investigations, follow-up, documentation and reporting activities.
- (3) The local health department shall investigate and respond to environmental health complaints or referrals.
- (4) The local health department shall have a public health preparedness and response plan that:
 - (A) corresponds to existing local and state emergency and bioterrorism plans
 - (B) establishes roles and responsibilities of plan participants
 - (C) identifies training for participants in those roles
 - (D) establishes a chain of command among plan participants
 - (E) describes a system of emergency notification to local and state public health staff and other key decision makers based upon the nature of the event
 - (F) is available to staff on site
- (5) The local health director shall maintain periodic communication with local emergency managers.
- (6) The local health department shall annually test or implement the local public health preparedness and response plan.
- (7) The local health department shall have one of the following:
 - (A) public health preparedness and response coordination team with an environmental health member and a public health preparedness response coordinator, or
 - (B) an epidemiology team with an environmental health member and an epidemiology team coordinator.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .0401 BENCHMARK 9

(a) Benchmark: The local health department shall provide the general public and elected and appointed officials with information on health risks, health status, and health needs in the

community as well as information on policies and programs that can improve community health.

(b) Activities:

- (1) The local health department shall publish and disseminate data and information on current local health issues to the general public, community partners, and elected and appointed officials.
- (2) The local health department shall have a mechanism by which the public can access community data and health status information maintained in the agency in accordance with applicable laws and rules.
- (3) The local health department shall provide information to the public on the availability and location of health data that are accessible in the public domain.
- (4) The local health department shall have written guidelines that it follows in responding to requests for information.
- (5) The local health department shall inform affected community members of changes in department policies or operations.
- (6) The local health department shall assure that information disseminated by the agency reflects the cultural and linguistic character of the local population as required by Title VI of the Civil Rights Act.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .0702 BENCHMARK 17

(a) Benchmark: The local health department shall monitor compliance with public health laws and rules.

(b) Activities:

- (1) The local health department shall conduct inspection and permitting activities for state mandated environmental health regulatory programs.
- (2) The local health department shall conduct inspection and permitting activities assigned to the local health department by local rules, ordinances, or policies.
- (3) The local health department shall monitor compliance with communicable disease control laws and rules.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .0801 BENCHMARK 19

(a) Benchmark: The local health department shall identify populations that are not receiving preventive services or are otherwise underserved with respect to health care.

(b) Activities:

- (1) The local health department shall assess use of public health programs and health care services by underserved, at-risk and vulnerable populations identified in the community health assessment process.
- (2) The local health department shall take actions to include linguistically and culturally representative persons in planning and implementing programs intended to reach underserved population groups.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1204 BENCHMARK 33

(a) Benchmark: The local health department shall assure its financial accountability.

(b) Activities:

- (1) The local health department shall demonstrate that it receives financial support from a local taxing authority.
- (2) The local health department shall operate under a budget approved by the appropriate authority under state statute.
- (3) The local health department shall follow generally accepted accounting principles.
- (4) The local health department shall have policies that assure segregation of financial management duties and accountability for funds.
- (5) The local health department shall determine the cost of services in setting fees.
- (6) The local health department shall develop and present periodic budget, expenditure and other financial tracking reports to the board of health for its review.
- (7) The local health department shall have a financial risk management system in place to address uncollected fees and bad debt.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1301 BENCHMARK 34

(a) Benchmark: The local board of health shall exercise its authority to adopt and enforce rules necessary to protect and promote the public's health.

(b) Activities:

- (1) The local board of health shall have operating procedures which shall comply with state law.
- (2) The local board of health shall review its operating procedures annually.
- (3) The local board of health shall have access to legal counsel.
- (4) The local board of health shall follow the procedures for adopting rules in G.S. 130A-39.

- (5) The local board of health shall evaluate the need for the adoption or amendment of local rules or ordinances.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1303 BENCHMARK 36

- (a) Benchmark: The local board of health members shall be trained regarding their service on the board.
- (b) Activities:
- (1) The local health department shall provide board of health members with a written board handbook developed or updated within the past 12 months.
 - (2) The local health department shall assure new board of health members receive training and reference materials on the authorities and responsibilities of the local board of health within the first year after appointment to the board.
 - (3) The local health department shall assure ongoing training for board of health members related to the authorities and responsibilities of local boards of health.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1304 BENCHMARK 37

- (a) Benchmark: The local board of health shall assure the development, implementation and evaluation of local health services and programs to protect and promote the public's health.
- (b) Activities:
- (1) The local board of health shall assure that a qualified local health director, in accordance with G.S. 130A-40 or 40.1, is in place to lead the agency.
 - (2) The local board of health shall approve policies for the administration of local public health programs.
 - (3) The local board of health shall describe and define the knowledge, skills, and abilities that must be met by the local health director, consistent with the requirements in G.S. 130A-40.
 - (4) The local board of health shall review and approve the job description of the local health director.
 - (5) The local board of health shall conduct an annual performance review of the health director.
 - (6) The local board of health shall approve policies for the recruitment, retention and workforce development for agency staff.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1305 BENCHMARK 38

- (a) Benchmark: The local board of health shall participate in the establishment of public health goals and objectives.
- (b) Activities:
- (1) The local board of health shall annually review reports provided by the local health department on the community's health.
 - (2) The local board of health shall review community health assessment data and citizen input used to plan and monitor progress toward health-related goals.
 - (3) The local board of health shall assure that individuals, agencies, and organizations have the opportunity to participate in the development of goals, objectives and strategies for community health improvement.

History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006.

10A NCAC 48B .1306 BENCHMARK 39

- (a) Benchmark: The local board of health shall assure the availability of resources to implement the essential services described in G.S. 130A-34.1(e)(2).
- (b) Activities:
- (1) The local board of health shall communicate with the board of county commissioners, units of government and private foundations in support of local health department efforts to secure national, state and local financial resources.
 - (2) The local board of health shall review fiscal reports to assure essential services of public health are being provided in accordance with local, state and federal requirements.
 - (3) The local board of health shall annually review and approve the local health department budget and approve fees in accordance with G.S. 130A-39(g).
 - (4) The local board of health shall communicate with the board of county commissioners, units of government and private foundations in support of the development, implementation and evaluation of public health programs and a community health improvement process.
 - (5) The local board of health shall assure that the proposed budget for the local health department meets maintenance of effort requirement in the consolidated agreement between the Division of Public Health and local health department.

History Note: Authority G.S. 130A-34.1;

*Temporary Adoption Eff. January 1, 2006;
Eff. October 1, 2006.*

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 05A .0101 DEFINITIONS

As used in this Subchapter:

- (1) "ISO" means the Insurance Services Office, Inc., or any successor organization.
- (2) "North Carolina Fire Suppression Rating Schedule" or "NCFSRS" means the ISO Fire Suppression Rating Schedule. The NCFSRS is incorporated into this Subchapter by reference, including subsequent amendments or editions. The NCFSRS may be obtained from the ISO at <http://www.iso.com/> for fifty-five dollars (\$55.00). Fire chiefs and local government chief administrative officials may request a single copy of the FSRS, or on-line access to the FSRS and commentaries, free of charge.
- (3) "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North Carolina Department of Insurance.

*History Note: Authority G.S. 58-2-40;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. October 1, 2006; July 1, 1986.*

11 NCAC 05A .0301 ELIGIBLE MEMBERS

The certification provided by the State Firemen's Association to the Department under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a financial statement and status of fire department membership was submitted.

*History Note: Authority G.S. 58-2-40(1); 58-84-40;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. October 1, 2006; February 1, 1993; July 1, 1986.*

11 NCAC 05A .0501 PURPOSE

The purpose of this Section is to set forth the minimum requirements that a fire department must meet in order to qualify for eligibility for death benefits under Article 12A of Chapter 143 of the North Carolina General Statutes, and the North Carolina Firemen's Pension Fund under G.S. 58-86-25; for initial recognition in insurance premiums for a responding fire department; and for response rating to designate insurance premiums. Upon meeting the initial requirements for certification, a fire district shall be given a rating of "9S". A fire district may get a rating from "1 through 8" upon improving its response capabilities with "1" being the best rating. For ratings of 1 through 8, the fire department shall be evaluated using the current NCFSRS.

*History Note: Authority G.S. 58-2-40; 58-86-25;
Eff. September 1, 1985;*

Amended Eff. October 1, 2006; July 1, 1992; July 1, 1986.

11 NCAC 05A .0504 PERSONNEL

Upon initial certification as a Class "9S" fire department, the fire department shall have a minimum of 20 personnel, with at least two designated as traffic control and at least 18 designated as firefighters. At the time of re-inspection, a fire department shall maintain 20 personnel or show, through documentation, that an average of 12 personnel have responded on each of the last 20 structure fires. At least one engine with four personnel must respond to each reported structure fire alarm. A roster of personnel containing names and attendance of business meetings and training meetings shall be kept.

*History Note: Authority G.S. 58-2-40; 58-86-25;
Eff. September 1, 1985;
Amended Eff. October 1, 2006; July 1, 1992.*

11 NCAC 05A .0505 DRILLS AND MEETING REQUIREMENTS

All members of fire departments shall comply with the drills and meetings requirements of G.S. 58-86-25.

*History Note: Authority G.S. 58-2-40; 58-86-25;
Eff. September 1, 1985;
Amended Eff. October 1, 2006; July 1, 1992.*

11 NCAC 05A .0506 ALARM AND COMMUNICATIONS

Communications facilities shall be provided for reporting emergencies, dispatching of fire apparatus, and notification of firefighters. The system shall provide one telephone listing for fire emergencies that reaches a location that receives calls and responds 24 hours a day. That location shall have the capability of activating sirens or pagers in order to dispatch the fire department.

*History Note: Authority G.S. 58-2-40; 58-86-25; 143-166.1;
Eff. September 1, 1985;
Amended Eff. October 1, 2006.*

11 NCAC 05A .0507 RECORDS AND DOCUMENTS

In addition to personnel records, the city or county manager or fire department chief or county fire marshal shall keep records on dates, times and locations of emergencies, inventory of equipment, and maintenance of apparatus; and shall submit the following documents to the Department of Insurance: roster, charter, contract(s) with city and county, service test report, weight tickets, current map and description, an inventory of protective clothing, and verification from the county approving the fire district boundaries.

*History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;
Eff. September 1, 1985;
Amended Eff. October 1, 2006; July 1, 1992.*

11 NCAC 05A .0508 APPARATUS

To qualify for initial certification and receive a minimum rating of Class "9S", the fire department shall have the following apparatus and equipment:

- (1) Pumper.
 - (a) The fire department shall have an approved pumper (automotive fire apparatus equipped with a fire pump and tank). To be approved, the fire department pumper must be certified by Underwriters Laboratories, Inc., and constructed in accordance with the National Fire Protection Association Standard 1901 - Standard for Automotive Fire Apparatus. The apparatus shall not be loaded beyond limits certified by the "Gross Vehicle Weight" label attached to the vehicle; nor shall the vehicle be modified in a manner that would invalidate this certification. NFPA Standard 1901 is incorporated into this Subchapter by reference, but not including subsequent amendments or editions. NFPA Standard 1901 is available from the National Fire Protection Association at <http://www.nfpa.org/> for fifty dollars (\$50.00).
 - (b) The pump shall have a rated capacity of not less than 750 gallons per minute at 150 pounds per square inch net pump pressure.
 - (c) The pumper shall be equipped with at least a 500 gallon tank.
 - (d) A service test must have been performed on the "first responding" pumper during the 12-month period before the inspection. If the pumper has been purchased as new within the 12-month period before the "9S" inspection, the U.L. Certificate meets this requirement.
- (2) Tanker.
 - (a) The fire department shall have a motorized tank truck of at least 1000 gallons capacity or enough to equal at least 1500 gallons total for pumper and tanker
 - (b) The tanker shall be equipped with the necessary hose for filling the tank and hose for transferring water to the pumper.
 - (c) The tanker, when fully loaded, shall not exceed the Gross Vehicle Weight limits as certified on the label attached to the vehicle; nor shall the vehicle be modified in a manner that would invalidate this certification. All tankers shall be baffled in accordance with the National Fire

Protection Association Standard 1901 – Standard for Automotive Fire Apparatus which is available from the National Fire Protection Association.

- (3) The following equipment shall be carried on responding fire department pumpers:
 - (a) The pumper shall be equipped with 2 - 150 foot 1-1/2 inch hose lines with fog nozzles attached;
 - (b) One booster reel or three pre-connected hose lines;
 - (c) Suction hose - size necessary to flow the capacity of pumper - 2 - 10 foot sections;
 - (d) Four OSHA approved self-contained breathing apparatus in proper working condition;
 - (e) OSHA approved protective clothing for all firefighters including helmets, hoods, coats, pants, boots, gloves; and reflective clothing and helmet for traffic control personnel;
 - (f) One 12 foot or 14 foot roof ladder;
 - (g) One 24 foot or 35 foot extension ladder;
 - (h) One axe;
 - (i) One claw tool (Halligan Tool may replace claw tool and crowbar);
 - (j) One crowbar (Halligan Tool may replace crowbar and claw tool);
 - (k) One pike pole, minimum 8 foot;
 - (l) Two portable hand lights ("4V" wet or "6V" dry);
 - (m) 100 feet of rope, minimum ½ inch;
 - (n) Two shovels;
 - (o) Two 20 pound. Class B-C portable extinguishers;
 - (p) One First Aid kit; and
 - (q) One bolt cutter, 14 inches or longer.

History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25; Eff. September 1, 1985; Amended Eff. October 1, 2006; August 3, 1992.

11 NCAC 05A .0510 INSPECTION

Any persons or fire departments needing information on obtaining certification under this Section may contact the OSFM.

History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25; Eff. September 1, 1985; Amended Eff. October 1, 2006; July 1, 1992.

11 NCAC 05A .0511 SIX MILE INSURANCE DISTRICT

To extend its insurance district to six miles, each fire department shall apply and meet the following criteria:

- (1) The fire department shall provide the OSFM with a hand drawn map and written description or a GIS computer generated map of its fire district.
- (2) The map and written description shall be presented to the County Commissioners for their approval, as set forth in G.S. 153A-233.
- (3) The department applying to extend its insurance district to six miles shall enter into a written automatic aid contract with the adjoining districts specifying that "an apparatus capable of transporting" a minimum of 1000 gallons of water shall be dispatched simultaneously with the department whose district the incident is occurring within.
- (4) The County shall establish automatic aid protocols. These protocols shall be maintained at the county communication center and shall be used on all alarms involving reported structure fires.

History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;
 Eff. October 1, 2006.

11 NCAC 05A .0512 STANDARDS AND POLICIES

- (a) The NCFRS shall be used by the OSFM when the OSFM inspects fire departments for the purpose of determining Fire Insurance District Ratings Classifications. Each fire department shall assure the response of at least four members and one engine to all fires and fire alarms in structures. The chief may be one of the four responding members. Response of a fire department, as primary first alarm department, to a fire or fire alarm in a structure within its established fire insurance district with less than the minimum required engine or manpower shall be considered by the OSFM to be a Non-Response. Any department determined by the OSFM to have two or more "Non-Response" records shall be placed by the OSFM on probation for a period of 12 months. A fire department on probation shall submit quarterly to the OSFM inspector all fire and fire alarm in structure response records for the next 12 consecutive calendar months that show there have been no additional "non-responses" within that 12 month period. If the fire department fails to submit the quarterly report, the insurance district for the fire department shall be designated a "Class 10" by the OSFM.
- (b) After evaluation of data collected during an NCFRS inspection, if the results of the inspection indicate that a fire department's ratings classification must be reduced, OSFM shall notify the city or county manager or fire department chief or county fire marshal in writing of the reduction in ratings classification. The notification shall include:
- (1) Hydrant flow tests and hauled water evaluations.
 - (2) Ratings classification details.
 - (3) Recommendations for improvement.
- (c) If the city or county manager or fire department chief or county fire marshal fails to acknowledge receipt with 30 days after receipt of the notification, the OSFM shall reduce the ratings classification of the fire department.

- (d) If the city or county manager or fire department chief or county fire marshal acknowledges receipt of the notification to the OSFM within 30 days after receipt of the notification and advises the OSFM that the fire department wants to retain its ratings classification, the city or county manager or fire department chief or county fire marshal shall consult with the individual who conducted the NCFRS inspection and develop a plan to correct the deficiencies that caused the reduction in ratings classification.
- (e) Within 90 days after the consultation, the city or county manager or fire department chief or county fire marshal shall submit the plan to the OSFM which shall determine whether the plan is satisfactory to cover the deficiencies. The OSFM shall notify the city or county manager or fire department chief or county fire marshal in writing when the OSFM approves the plan.
- (f) The fire department shall have one year after the receipt of the approval to complete the plan to correct the deficiencies that caused the reduction in ratings classification.
- (g) The sharing or borrowing of equipment between or among fire departments or between or among stations within a fire department, the falsifying of documents, or engaging in any other act of misrepresentation, for the purpose of falsely satisfying the apparatus/equipment grading score of a NCFRS inspection is prohibited.

History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;
 Eff. October 1, 2006.

TITLE – 15A DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02E .0611 AGRICULTURAL AND HORTICULTURAL WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

- (a) Agricultural and horticultural water users subject to the water withdrawal registration requirements of G.S. 143-215.22H shall develop a written plan for responding to water shortages to maximize water use efficiency and reduce water usage to the maximum extent possible. Any of the guidance documents on best management practices for the efficient use of water in agricultural and horticultural operations developed by the United States Department of Agriculture's Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, the NCDENR Division of Soil and Water Conservation, North Carolina State University, the North Carolina Cooperative Extension Service or other industry trade organizations may be used to assist agricultural and horticultural water users identify the most appropriate water use efficiency measures that they may incorporate into the plan for their particular operational needs.
- (b) When a region of the state is designated as suffering from Severe Drought, Extreme Drought or Exceptional Drought by a NCDMAC drought advisory, agricultural and horticultural water users shall reexamine and maintain water delivery systems to minimize water loss and maximize water use efficiency.

(c) Agricultural and horticultural water users that depend on the water storage of a privately or publicly owned impoundment or withdraw water under a contract issued by the owner of an impoundment shall have a written plan for responding to water shortages that is consistent with the provisions of the contract and with any Water Shortage Response Plan provisions established by the owner of the impoundment.

History Note: Authority S.L. 2002-167; Eff. Pending Legislative Review.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of

counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on deer on bear sanctuaries;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
 - (iii) Raccoon and opossum may be hunted when in season on Uwharrie Game Lands;
 - (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed

- between March 1 and the Monday on or nearest October 15.
- (f) The listed seasons and restrictions apply in the following game lands:
- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
 - (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (4) Bachelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
 - (C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.
 - (D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
 - (7) Broad River Game Land in Cleveland County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited.
 - (8) Brunswick County Game Land in Brunswick County: Permit Only Area
 - (9) Buckhorn Game Land in Orange County: Permit Only Area, except during the bow and arrow season for deer, during which the area shall be open as a three-day-per-week area.
 - (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
 - (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 8 through the following Saturday, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.

- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding, including all equine species, is prohibited.
 - (E) Target shooting is prohibited
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (14) Cape Fear Game Land in Pender County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (15) Carteret County Game Land in Carteret County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (16) Caswell Game Land in Caswell County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Deer of either sex may also be taken the Thursday and Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (F) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (17) Caswell Farm Game Land in Lenoir County
 - (A) Dove-Only Area
 - (B) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- (18) Catawba Game Land in Catawba County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.

- (D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
- (20) Cherokee Game Land in Ashe County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Gates County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (23) Cold Mountain Game Land in Haywood County
 (A) Six Days per Week Area
 (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (24) Columbus County Game Land in Columbus County.
 (A) Three Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Waterfowl shall be taken only on the following days:
 (i) the opening and closing days of the applicable waterfowl seasons;
 (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (26) Currituck Banks Game Land in Currituck County
 (A) Six Days per Week Area
 (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only after November 1.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
- (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last day of the Deer With Visible Antlers Season.
 (C) No hunting on posted parts of bombing range.
 (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dupont State Forest Game Lands in Henderson and Transylvania counties
 (A) Hunting is by Permit only.
 (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (29) Elk Knob Game Land in Ashe and Watauga counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (30) Goose Creek Game Land in Beaufort and Pamlico counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:

- (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.
- (E) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (31) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (32) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (33) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (34) Harris Game Land in Chatham, Harnett and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only.
- (35) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area.
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.
 - (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur, provided however, that waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.

APPROVED RULES

- (D) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (36) Hyco Game land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (37) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (38) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail and other areas specifically posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (39) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Use of centerfire rifles shall be prohibited.
- (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season shall be prohibited.
- (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
- (40) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (41) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (42) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (43) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (44) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (45) Mitchell River Game Land in Surry County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (46) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties

- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
 - (C) Raccoon and opossum shall be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (47) Needmore Game Land in Macon and Swain counties.
- (A) Six Days per Week Area
 - (B) Horseback riding shall be prohibited except on designated trails May 16 through August 31 and all horseback riding shall be prohibited from September 1 through May 15. This Rule includes all equine species.
- (48) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (49) New Lake Game Land in Hyde and Tyrrell counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (50) Nicholson Creek Game Land in Hoke County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the third Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
- (51) North River Game Land in Currituck, Camden and Pasquotank counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) Wild turkey hunting is by permit only on that portion in Camden County.
 - (E) Hunting on the posted waterfowl impoundment is by permit only.
- (52) Northwest River Marsh Game Land in Currituck County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (53) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- (54) Perkins Game Land in Davie County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (55) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery County south of the Blue Ridge Parkway, Yancey County, and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.

- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- (56) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (57) Rhodes Pond Game Land in Cumberland County
 - (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- (58) Roanoke River Wetlands in Bertie, Halifax and Martin counties
 - (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
 - (C) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (59) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
- (60) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (61) Rockfish Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the third Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (62) Sampson Game Land in Sampson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
 - (A) Three Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
 - (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, raccoon and squirrel seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
 - (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
 - (E) Wild turkey hunting is by permit only.
 - (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
 - (G) Opossum, raccoon and squirrel (fox and gray) hunting on the field trial

- grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.
- (I) Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited except by participants in authorized field trials.
- (64) Sandy Mush Game Land in Buncombe and Madison counties.
 (A) Three Days per Week Area
 (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (65) Scuppernong Game Land in Tyrrell and Washington counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (66) Shocco Creek Game Land in Franklin and Warren counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Horseback riding, including all equine species, is prohibited.
- (67) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 (A) Six Days per Week Area
 (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving.
 (C) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through
- May 15. This Rule includes all equine species.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (68) Stones Creek Game Land in Onslow County
 (A) Six-Day per Week Area.
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season
 (C) Swimming in all lakes is prohibited.
- (69) Suggs Mill Pond Game Land in Bladen County;
 (A) Hunting is by Permit only.
 (B) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (70) Sutton Lake Game Land in New Hanover County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (71) Tar River Game Land in Edgecombe County -
 - hunting is by permit only.
- (72) Three Top Mountain Game Land in Ashe County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (73) Thurmond Chatham Game Land in Wilkes County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
 (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must

- obtain a game lands license prior to horseback riding on this area.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (74) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (75) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (76) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (77) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (78) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) After October 1, a special permit is required for hunting on opening and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.
- (g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
 Bertie, Halifax and Martin counties-Roanoke River Wetlands
 Bertie County-Roanoke River National Wildlife Refuge
 Bladen County—Suggs Mill Pond Game Lands
 Burke County—John's River Waterfowl Refuge
 Dare County-Dare Game Lands (Those parts of bombing range posted against hunting)
 Dare County--Roanoke Sound Marshes Game Lands
 Davie-Hunting Creek Swamp Waterfowl Refuge
 Gaston, Lincoln and Mecklenburg counties-Cowan's Ford Waterfowl Refuge
 Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305; Eff. February 1, 1976; Temporary Amendment Eff. October 3, 1991; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994; Temporary Amendment Eff. October 1, 1999; July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003); Amended Eff. October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006, June 1, 2005; October 1, 2004.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06D .0305 END-OF-COURSE ASSESSMENTS

- (a) The LEA shall include each student's end-of-course assessment results in the student's permanent records and high school transcript.
(b) The LEA shall give each end-of-course assessment within the final five days of the course on a block schedule and the final 10 days of the course on a traditional schedule.
(c) LEAs shall use results from all operational end-of-course assessments as at least 25% of the student's final grade for each respective course.
(d) Students who are enrolled for credit in courses in which end-of-course assessments are required shall take the appropriate end-of-course assessment.
(e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course assessments.
(f) Each student shall take the appropriate end-of-course assessment the first time the student takes the course even if the course is an honors or advanced placement course.
(g) Students shall take the appropriate end-of-course assessment at the end of the course or an alternate assessment regardless of the grade level in which the course is offered.
(h) Students who are identified as failing a course for which an end-of-course assessment is required shall take the appropriate end-of-course assessment.
(i) Students may drop a course with an end-of-course assessment within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.
(j) Students who are enrolled in the Integrated Math sequence shall take the Algebra I, Geometry, and Algebra II end-of-course assessments. The LEA shall administer these assessments as follows:

- (1) The Algebra I end-of-course assessment shall be administered during the final five days of the Integrated Math II course if taken on a block schedule or the final 10 days if taken on a traditional schedule.
(2) The Geometry end-of-course assessment shall be administered during the Integrated Math III course on a locally established test date.
(3) The Algebra II end-of-course assessment shall be administered during the final five days of the Integrated Math III course if taken on a block schedule or the final 10 days if taken on a traditional schedule.

History Note: Authority G.S. 115C-12(9)c.; 115C-81(b)(4); Eff. November 1, 1997; Amended Eff. October 1, 2006; January 2, 2006; April 1, 2002; September 1, 2001; August 1, 2000; August 1, 1999.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

21 NCAC 14H .0120 FOOTSPA SANITATION

Manicurists and Cosmetologists shall use the following disinfection procedures to ensure proper cleaning and maintenance of the footspa equipment and to prevent bacterial infection:

- (1) Between each customer a manicurist or cosmetologist shall:
(a) drain all water and remove all debris from the footspa;
(b) clean and scrub the surfaces and walls of the footspas with a scrub brush soap or detergent and rinse with clean, clear water; and
(c) disinfect with an EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity used according to the manufacturer's instructions.
(2) At the end of the day a manicurist or cosmetologist shall:
(a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
(b) before replacing the screen wash the screen with a chlorine bleach solution of one part bleach to 10 parts water, or totally immerse the screen in an EPA registered disinfectant;
(c) fill the footspa tub with five gallons of water and four cups of five per cent bleach solution;
(d) circulate the solution through the footspa system for no less than 10 minutes;
(e) let the solution sit overnight (at least six - ten hours);
(f) drain and flush the system the following morning; and
(g) make a record of the date/time of this cleaning and disinfecting.

History Note: Authority G.S. 88B-4; Eff. February 1, 2004; Amended Eff. October 1, 2006; November 1, 2005.

21 NCAC 32B .0105 FEDERATION CREDENTIAL VERIFICATION SERVICE PROFILE

All applicants for a license to practice medicine under this chapter who are registered with the Federation Credential Verification Service (FCVS) shall submit a FCVS profile as part of their license application.

History Note: Authority G.S. 90-6; 90-11; Eff. October 1, 2006.

21 NCAC 54 .2006 PSYCHOLOGICAL ASSOCIATE ACTIVITIES

(a) The assessment of overall personality functioning by a psychological associate requires supervision. The assessment of personality functioning involves any assessment or evaluative technique which leads to conclusions, inferences, and hypotheses regarding personality functioning. This includes:

- (1) all statements regarding personality attributes, features, traits, structure, dynamics, and pathology or assets;
(2) the use of personality assessment techniques which include, but are not limited to, observation, interviewing, mental status examinations, word association tests, diagnostic play therapy, and autobiographical techniques; and
(3) the use of standardized personality techniques or tests. Examples of techniques or tests include, but are not limited to, the following: Rorschach, Thematic Apperception Test, sentence completion tests, the House Tree Person, Minnesota Multiphasic Personality Inventory, the California Personality Inventory, The Millon tests, the 16PF, and all other self-report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly utilized measures.

Not requiring supervision are screening techniques which lead to simple descriptors of persons which may be completed by a variety of professional and non-professional observers and are interpreted by other parties.

(b) The conduct of neuropsychological evaluations by psychological associates requires supervision. Not requiring supervision are neuropsychological screenings which lead to simple behavioral descriptions rather than clinical interpretations, or the administration of rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.

(c) Psychotherapy, counseling, and any other interventions with a clinical population for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior provided by a psychological associate require supervision. Clinical populations include persons with discernible mental, behavioral, emotional, psychological, or psychiatric disorders as evidenced by an established Axis I or Axis II diagnosis or V Code condition in the then current DSM and all persons meeting the criteria for such diagnoses. Interventions other than psychotherapy and counseling that are encompassed by this definition include, but are not limited to, psychological assessment, psychoanalysis, behavior analysis/therapy, biofeedback, and hypnosis.

Supervision is required when the psychological associate is providing an intervention to persons within a clinical population, directly with the person(s) or in consultation with a third party, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior. Supervision is required for the design or clinical oversight of interventions for persons within a clinical population, such as biofeedback techniques and behavior intervention programs; however, supervision is not required for the actual implementation of such interventions that were designed for others to implement, which may or may not constitute ancillary services.

(d) The use, including authorization, of intrusive, punitive, or experimental procedures, techniques, or measures by a psychological associate requires supervision. These procedures, techniques, or measures include, but are not limited to, seclusion, physical restraint, the use of protective devices for behavioral control, isolation time-out, and any utilization of punishment techniques involving aversive stimulation. Also included in this definition are any other techniques which are physically intrusive, are restrictive of human rights or freedom of movement, place the client at risk for injury, or are experimental in nature (i.e., in which the efficacy and degree of risk have not previously been clinically established).

(e) Supervision is required for a psychological associate who provides clinical supervision to other service providers who are engaged in activities which would require supervision if directly provided by the psychological associate.

History Note: Authority G.S. 90-270.5(e); 90-270.9; Eff. October 1, 1991; Amended Eff. October 1, 2006.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02C .0209 EVALUATION OF PRESIDENTS

(a) Methodology and Instrumentality. Each local board of trustees shall evaluate the performance of its president annually. The evaluation instrument and methodology shall be selected by the local board, but the evaluation shall, at a minimum, include the following categories:

- (1) General administration;
(2) Relationships including:
(A) Internal relationships with faculty, staff, students, and trustees; and,
(B) External relationships with business and industry, the media, governmental bodies, and the general public;
(3) Personal attributes;
(4) Personnel administration;
(5) Fiscal and facilities administration; and,
(6) Academic administration.

(b) Reporting Requirements. Prior to June 30 of each year, each college board of trustees shall, in writing, notify the State Board of the following:

- (1) The time period for which its president was evaluated and the date the evaluation was completed;
- (2) Description of the methodology used for the evaluation;
- (3) Certification that the evaluation included a written assessment of the president's performance in each of the categories identified in Paragraph (a) of this Rule;
- (4) Certification that the full board discussed the evaluation results and the results were discussed with the president; and,
- (5) Certification that appropriate action, as defined by the local board, has been taken if the president's performance is less than satisfactory in any of the categories identified in Paragraph (a) of this Rule.

*History Note: Authority G.S. 115D-5; 115D-20;
Eff. September 1, 1993;
Amended Eff. October 1, 2006.*

**23 NCAC 02E .0204 COURSES AND STANDARDS
FOR CURRICULUM PROGRAMS**

The Combined Course Library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Combined Course Library.
 - (a) The Combined Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
 - (i) Course prefix;
 - (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; and,
 - (vii) Course description consisting of three sentences.
 - (b) A numbering system for the Combined Course Library is as follows:
 - (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to courses approved only at the certificate and diploma level. These courses shall not be

- (iii) The numbers 110-199 and 210-299 shall be used for courses approved at the associate degree level. These courses may also be included in certificate and diploma programs.
- (c) The college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the Combined Course Library.
 - (i) The college may add a fourth sentence to the course description to clarify content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. Each of the following criteria shall apply to courses divided into incremental units:
 - (A) A curriculum program course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number.
 - (B) The units shall equal the entire course of instruction, without omitting any competencies.
 - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (D) If the course is a prerequisite to another course, the student shall complete all

- component parts before enrolling in the next course.
- (E) The components of a split curriculum program course shall not be used to supplant training for occupational extension.
- (d) The Community College System Office shall revise and maintain courses in the Combined Course Library.
- (2) Development of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges. Changes in curriculum standards shall be approved by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:
- (a) A request is made to the Community College System Office to change the standards for a curriculum program title; and,
- (b) A two-thirds majority of institutions approved to offer the curriculum program title must concur with the request.
- (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
- (a) Associate in Applied Science Degree. The associate in applied science degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. The requirements for the Associate in Applied Science Degree are as follows:
- (i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in either natural sciences or mathematics.
- (ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major courses selected from the Combined Course Library. Major courses are those which offer specific job knowledge or skills. Criteria for the major hours category are as follows:
- (A) Major Core Hours. The major hours category shall be comprised of identified core courses or subject areas or both which are required for each curriculum program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit.
- (B) Major Concentration Hours. The major hours category may also include hours required for a concentration of study. A concentration of

study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours shall be unique to the concentration.

(C) Other Major Hours. Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.

(D) Work Experience Hours. The major hours category may include up to a maximum of eight semester hours credit for work experience, including cooperative education, practicum's, and internships. Under a curriculum standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North

Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. The Community College System Office shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.

(iii) An associate in applied science degree curriculum program may include a maximum of seven other required hours to complete college graduation requirements. These courses shall be selected from the Combined Course Library.

(iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses.

(b) Associate in Arts Degree. The associate in arts degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental

mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for the Associate in Arts Degree are as follows:

- (i) The associate in arts degree program shall include a minimum of 44 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) Six semester hours of English composition;
 - (B) 12 semester hours of humanities/fine arts;
 - (C) 12 semester hours of social/behavioral sciences;
 - (D) Six semester hours of mathematics; and,
 - (E) Eight semester hours of natural sciences.
- (ii) The associate in arts degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in arts program. This course will receive transfer evaluation by the receiving institution.
- (iii) A college may award a diploma under an approved associate in arts degree program for a series of courses taken from the approved associate in arts degree program of study. This diploma shall include a minimum of 44 and a

maximum of 47 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) 12 semester hours of humanities/fine arts;
- (C) 12 semester hours of social/behavioral sciences;
- (D) Six semester hours of mathematics; and,
- (E) Eight semester hours of natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit diploma program. This course will receive transfer evaluation by the receiving institution.

- (c) The associate in science degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for Associate in Science Degree are as follows:
 - (i) The associate in science degree program shall include a minimum of 44 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) Six semester hours of English composition;
- (B) Nine semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences; and,
- (D) 20 semester hours of mathematics and natural sciences that shall include a minimum of six semester hours in mathematics and a minimum of eight semester hours in natural sciences.

(ii) The associate in science degree program shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in science program. This course will receive transfer evaluation by the receiving institution.

(iii) A college may award a diploma under an approved associate in science degree program for a series of courses taken from the approved associate in science degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) Nine semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences; and,
- (D) 20 semester hours of natural sciences and mathematics that shall include a minimum of six hours in mathematics and a minimum of eight hours in natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit program. This course will receive transfer evaluation by the receiving institution.

(d) The associate in fine arts degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Diplomas and certificates are not allowed under this degree program. The requirements for the Associate in Fine Arts Degree are as follows:

(i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) Six semester hours of English composition;

- (B) Six semester hours of humanities/fine arts;
 - (C) Nine semester hours of social/behavioral sciences;
 - (D) Three semester hours of mathematics; and,
 - (E) Four semester hours from the natural sciences.
- (ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in fine arts program. This course will receive transfer evaluation by the receiving college.
- (e) Associate in General Education. The associate in general education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers. The requirements for the Associate in General Education Degree are as follows:
- (i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in natural sciences or mathematics.
 - (ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education courses selected from the Combined Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.
- (f) Diploma. The Diploma shall be granted for a planned program of study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level. The requirements for the diploma curricula are as follows:
- (i) Diploma curricula shall include a minimum of six semester hours of general education courses selected from the Combined Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities/fine arts, social/behavioral sciences, or natural sciences and mathematics.
 - (ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from the Combined Course Library.
 - (A) A diploma curriculum program which is a stand-alone curriculum program title shall include identified core courses or subject areas or both within the major hours category.

- (B) Courses for other major hours in a stand-alone diploma curriculum program title shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of eight semester hours of credit.
- (iii) A diploma curriculum program may include a maximum of four other required hours to complete college graduation requirements. These courses shall be selected from the Combined Course Library.
- (iv) An institution may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved associate degree curriculum program of study.
 - (A) A diploma curriculum program offered under an approved associate degree curriculum program shall meet the standard general education and major course requirements for the diploma credential.
- (B) A college may substitute general education courses at the 100-109 level for the associate-degree level general education courses in a diploma curriculum program offered under an approved degree program.
- (C) The diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses and subject areas of the respective associate in applied science degree curriculum program.
- (v) Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.
- (g) Certificate Programs. The certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level. The requirements for the Certificate Programs are as follows:
 - (i) General education is optional in certificate curricula.
 - (ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from the Combined Course Library.
 - (A) A certificate curriculum program which is a stand-alone curriculum program title or

- which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall include 12 semester hours of credit from core courses or subject areas or both within the major hours category.
- (B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
- (iii) A certificate curriculum program may include a maximum of one other required hour of credit to complete college graduation requirements. This course shall be selected from the Combined Course Library.
- (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each institution shall select curriculum program courses from the Combined Course Library to comply with the standards for each curriculum program title the institution is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program.
- (a) Each institution shall maintain on file with the Community College System Office a copy of the official program of study approved by the institution's board of trustees.
- (b) When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.
- (c) A copy of each revised program of study shall be filed with and approved by the Community College System Office prior to implementation at the institution.
- History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Temporary Adoption Eff. June 1, 1997; Eff. July 1, 1998; Amended Eff. October 1, 2006; December 1, 2004; August 15, 2004; August 1, 2004.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday October 19, 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
John B. Lewis
Mary Beach Shuping
Judson A. Welborn
John Tart

RULES REVIEW COMMISSION MEETING DATES

November 16, 2006 December 14, 2006
January 18, 2007 February 15, 2007

**RULES REVIEW COMMISSION
OCTOBER 19, 2006
MINUTES**

The Rules Review Commission met on Thursday, October 19, 2006, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeff Gray, Jennie Hayman, Thomas Hilliard, John Lewis, Robert Saunders, Mary Shuping, John Tart, and David Twiddy.

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

The following people attended:

| | |
|-------------------|--|
| Torrey McLean | DHHS |
| Steven Sherman | DHHS |
| Dave Andres | DENR/Forest Resources |
| Sue Grayson | DENR |
| Ben F. Massey Jr. | NC Board of Physical Therapy Examiners |
| John Hoomani | Department of Labor |
| Erin Gould | Department of Labor |
| Nadine Pfeiffer | Division of Facility Services |
| Craig Smith | Division of Facility Services/CON |
| Barry Gupton | Building Code Council |
| Dedra Alston | Division of Child Development |
| Loni Pugh | Division of Child Development |
| Julie Edwards | OAH |
| Dana Sholes | OAH |
| Molly Masich | OAH |
| Felicia Williams | OAH |
| Glenda Artis | DHHS |
| Ed Mussler | DENR/Waste Management |
| John Silverstein | Physical Therapy Examiners |
| Robert Privott | Home Builders Association |
| Lisa Martin | Home Builders Association |
| Lancie Bailey | Water Treatment Fac. Operators Cert. Board |
| Julian Mann | OAH |

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Chairman Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the September 21, 2006 meetings. The minutes were approved as written.

FOLLOW-UP MATTERS

10A NCAC 13J .0903 & .1110: Medical Care Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 13B .0533, .0534, & .0536: Commission for Health Services – 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.

23 NCAC 3A .0113: Board of Community Colleges - The Commission did not receive any response from the agency therefore no action was taken.

25 NCAC 01I .2404: State Personnel Commission – The Commission approved this rule after receiving an explanation for “substantial equivalency” from Drake Maynard.

LOG OF FILINGS

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

Fire Code 903.2.7 Item B-3: Building Code Council – The Commission approved this rule; however, at least 10 letters were received requesting legislative review.

Commissioner Gray did not vote nor participate in any discussion concerning the Private Protective Services Board rule.

12 NCAC 11 .0201: Alarm Systems Licensing Board – The Commission objected to the rule due to ambiguity. In (b), it is not clear what other proof is acceptable evidence of high school graduation. The objection applies to existing language in the rule.

21 NCAC 48G .0601: Physical Therapy Examiners - The Commission objected to the rule due to ambiguity. In (a)(18), page 2 lines 1 and 2, the rule forbids licensees from “engaging in any activities, advances, or comments of a sexual nature” with “any person with whom the licensee interacts in practicing physical therapy.” It is unclear what persons the licensee is forbidden to engage in those activities with. It is also unclear what constitutes interaction within the meaning of this rule. It is unclear whether “interacts” means playing a direct role with the licensee in the providing of physical therapy or whether the person plays any role at all but in some other undetermined way “interacts” with the licensee.

TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules. All rules were approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca and Mr. Bryan updated the Commission on the status of the Pharmacy Board lawsuit and the arguments before the N.C. Supreme Court the previous day.

The meeting adjourned at 11:39 a.m.

The next scheduled meeting of the Commission is Thursday, November 16, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
October 19, 2006 Meeting**

CHILD CARE COMMISSION

General Provisions Related to Licensure of Homes 10A NCAC 09 .1701

MEDICAL CARE COMMISSION

Application for and Issuance of License 10A NCAC 13J .0903

Supervision and Competency of In-Home Aides or Other In-H... 10A NCAC 13J .1110

HHS-FACILITY SERVICES

Filing Applications 10A NCAC 14C .0203

Definitions 10A NCAC 14C .1501

Information Required of Applicant 10A NCAC 14C .1502

Performance Standards 10A NCAC 14C .1503

Support Services 10A NCAC 14C .1504

Staffing and Staff Training 10A NCAC 14C .1505

Definitions 10A NCAC 14C .1601

Information Required of Applicant 10A NCAC 14C .1602

Performancy Standards 10A NCAC 14C .1603

Staffing and Staff Training 10A NCAC 14C .1605

Definitions 10A NCAC 14C .1901

Definitions 10A NCAC 14C .2101

Performance Standards 10A NCAC 14C .2103

Performance Standards 10A NCAC 14C .2203

Information Required of Applicant 10A NCAC 14C .2502

Staffing and Staff Training 10A NCAC 14C .2505

Information Required of Applicant 10A NCAC 14C .2602

Definitions 10A NCAC 14C .2701

Information Required of Applicant 10A NCAC 14C .2702

Performance Standards 10A NCAC 14C .2703

Support Services 10A NCAC 14C .2704

Staffing and Staff Training 10A NCAC 14C .2705

Definitions 10A NCAC 14C .2801

Quality of Services 10A NCAC 14C .2806

Definitions 10A NCAC 14C .3501

Information Required of Applicant 10A NCAC 14C .3502

Support Services 10A NCAC 14C .3504

Staffing and Staff Training 10A NCAC 14C .3505

Information Required of Applicant 10A NCAC 14C .3702

Performance Standards 10A NCAC 14C .3703

Support Services 10A NCAC 14C .3704

Definitions 10A NCAC 14C .3901

Information Required of Applicant 10A NCAC 14C .3902

Performance Standards 10A NCAC 14C .3903

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| <u>Support Services</u> | 10A NCAC 14C .3904 |
| <u>Staffing and Staff Training</u> | 10A NCAC 14C .3905 |
| <u>Facility</u> | 10A NCAC 14C .3906 |
| <u>Definitions</u> | 10A NCAC 14C .4001 |
| <u>Information Required of Applicant</u> | 10A NCAC 14C .4002 |
| <u>Performance Standards</u> | 10A NCAC 14C .4003 |
| <u>Support Services</u> | 10A NCAC 14C .4004 |
| <u>Staffing and Staff Training</u> | 10A NCAC 14C .4005 |

BUILDING CODE COUNCIL

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|---|------------|
| <u>Fire Code 903.2.7 Group R Sprinklers (060314 Item B-3)</u> | 11 NCAC 08 |
|---|------------|

PRIVATE PROTECTIVE SERVICES BOARD

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|--|-------------------|
| <u>Training Requirements for Unarmed Security Guards</u> | 12 NCAC 07D .0707 |
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ALARM SYSTEMS LICENSING BOARD

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| <u>Experience Requirements for License</u> | 12 NCAC 11 .0202 |
| <u>Application for Registration</u> | 12 NCAC 11 .0301 |

LABOR, DEPARTMENT OF

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|---------------------------------------|------------------|
| <u>Menace to Public Safety Notice</u> | 13 NCAC 13 .0817 |
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ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

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| <u>Forest Development Program Approved Practices</u> | 15A NCAC 09C .0903 |
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HEALTH SERVICES, COMMISSION FOR

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|---|--------------------|
| <u>General Application Requirements and Processing for C&DLF...</u> | 15A NCAC 13B .0533 |
| <u>General Requirements for C&DLF Facilities and Units</u> | 15A NCAC 13B .0534 |
| <u>Site Study for C&DLF Facilities</u> | 15A NCAC 13B .0536 |
| <u>Lavatories and Baths</u> | 15A NCAC 18A .1809 |
| <u>Definitions</u> | 15A NCAC 18A .2201 |

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

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|---|--------------------|
| <u>Water Treatment Facility Operators Certification Board</u> | 15A NCAC 18D .0205 |
| <u>Certified Operator Required</u> | 15A NCAC 18D .0206 |

PHYSICAL THERAPY EXAMINERS

| | |
|---|-------------------|
| <u>Permitted Practice</u> | 21 NCAC 48C .0101 |
| <u>Responsibilities</u> | 21 NCAC 48C .0102 |
| <u>Prohibited Practice</u> | 21 NCAC 48C .0103 |
| <u>Supervision by Physical Therapist</u> | 21 NCAC 48C .0201 |
| <u>Function</u> | 21 NCAC 48C .0402 |
| <u>Persons Refused Examination Permission</u> | 21 NCAC 48D .0107 |
| <u>Foreign-Trained Physical Therapists</u> | 21 NCAC 48E .0110 |
| <u>Fees</u> | 21 NCAC 48F .0102 |

RULES REVIEW COMMISSION

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|--------------------------------|----|------|-----|-------|
| <u>Investigations</u> | 21 | NCAC | 48F | .0103 |
| <u>Conditions on Renewal</u> | 21 | NCAC | 48G | .0306 |
| <u>Sanctions Reapplication</u> | 21 | NCAC | 48G | .0602 |

STATE PERSONNEL COMMISSION

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|--|----|------|-----|-------|
| <u>System Portion IV: Employee Relations</u> | 25 | NCAC | 01I | .2404 |
|--|----|------|-----|-------|

ADMINISTRATIVE HEARINGS, OFFICE OF

| | | | | |
|--|----|------|-----|-------|
| <u>Electronic Version</u> | 26 | NCAC | 02C | .0105 |
| <u>Publication of a Permanent Rule</u> | 26 | NCAC | 02C | .0402 |

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**LIST OF APPROVED TEMPORARY RULES
October 19, 2006 Meeting**

HEALTH SERVICES, COMMISSION FOR

| | | | | |
|---|-----|------|-----|-------|
| <u>Determination of Financial Eligibility</u> | 10A | NCAC | 45A | .0202 |
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LABOR, DEPARTMENT OF

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|------------------------|----|------|-----|-------|
| <u>Fall Protection</u> | 13 | NCAC | 07F | .0605 |
|------------------------|----|------|-----|-------|

**AGENDA
RULES REVIEW COMMISSION
November 16, 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. Alarm Systems Licensing Board – 12 NCAC 11 .0201 (Bryan)
 - B. Cosmetic Art Examiners – 21 NCAC 14J .0502 (DeLuca)
 - C. Physical Therapy Examiners – 21 NCAC 48G .0601 (DeLuca)
 - D. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
- IV. Review of Rules (Log Report)
- V. Review of Temporary Rules (If Any)
- VI. Commission Business
- VII. Next meeting: December 14, 2006

**Commission Review/Permanent Rules
Log of Filings
September 21, 2006 through October 20, 2006**

* Approval Recommended, ** Objection Recommended, *** Other

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 12 are from the Office of Marine Affairs and include general provisions (.0100); structure of the agency (.0200); marine resources centers (.0300); marine resources center administrative board (.0400); marine science council (.0500); general provisions (.0600); marine science council (.0700); use of North Carolina aquariums (.0800); scheduling procedures for group use (.0900); procedures for use of research space (.1000); unauthorized use of facilities: fees (.1100); firearms fires smoking (.1200); conduct alcoholic beverages pets proper dress (.1300); commercial activities solicitations etc (.1400); and preservation of aquarium property (.1500).

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|---|----|------|----|-------|
| <u>Definitions</u> | 01 | NCAC | 12 | .0601 |
| Repeal/* | | | | |
| <u>Name Change</u> | 01 | NCAC | 12 | .0602 |
| Repeal/* | | | | |
| <u>Forms</u> | 01 | NCAC | 12 | .0603 |
| Repeal/* | | | | |
| <u>Appeals</u> | 01 | NCAC | 12 | .0604 |
| Repeal/* | | | | |
| <u>Powers and Duties</u> | 01 | NCAC | 12 | .0605 |
| Repeal/* | | | | |
| <u>Staff</u> | 01 | NCAC | 12 | .0701 |
| Repeal/* | | | | |
| <u>Bylaws</u> | 01 | NCAC | 12 | .0702 |
| Repeal/* | | | | |
| <u>Agenda</u> | 01 | NCAC | 12 | .0703 |
| Repeal/* | | | | |
| <u>Minutes</u> | 01 | NCAC | 12 | .0704 |
| Repeal/* | | | | |
| <u>When Use is Less Than 60 Days</u> | 01 | NCAC | 12 | .1001 |
| Repeal/* | | | | |
| <u>When Use Exceeds Days</u> | 01 | NCAC | 12 | .1002 |
| Repeal/* | | | | |
| <u>Applications Forwarded by Office of Marine Affairs</u> | 01 | NCAC | 12 | .1003 |
| Repeal/* | | | | |
| <u>Review of Applications</u> | 01 | NCAC | 12 | .1004 |
| Repeal/* | | | | |
| <u>Notification to Applicant</u> | 01 | NCAC | 12 | .1005 |
| Repeal/* | | | | |
| <u>Annual Renewal</u> | 01 | NCAC | 12 | .1006 |
| Repeal/* | | | | |
| <u>Criteria for Selecting Applicants</u> | 01 | NCAC | 12 | .1007 |
| Repeal/* | | | | |
| <u>Approval or Denial</u> | 01 | NCAC | 12 | .1008 |
| Repeal/* | | | | |

CREDIT UNION DIVISION

The rules in Chapter 6 are from the Credit Union Division.

The rules in Subchapter 6C concern credit unions and include general information (.0100); organization of credit unions (.0200); basic internal controls bookkeeping procedures and operation standards for state-chartered credit unions (.0300); loans (.0400); impairment and insolvency (.0500); dividends deposits and interest rebate (.0600); accounts (.0700); reports to administrator (.0800); pension plans (.0900); retention of records (.1000); forms used by credit union division (.1100); investments (.1200); reserves (.1300); and signature guarantee services.

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|--|----|------|-----|-------|
| <u>Permissible Transactions</u> | 04 | NCAC | 06C | .1202 |
| Amend/* | | | | |
| <u>Automatic Liens Upon All Shares to Secure All Debts</u> | 04 | NCAC | 06C | .1205 |
| Adopt/* | | | | |

SOCIAL SERVICES COMMISSION

The rules in Chapter 6 concern Aging Program Operations.

The rules in Subchapter 6P concern administration of adult day care services and include service description definition of terms (.0100); client eligibility fees and charges (.0200); payment methods for day care centers/homes (.0300); role responsibilities in program certification (.0400); and program certification (.0500).

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|---|-----|------|-----|-------|
| <u>Limitations</u> | 10A | NCAC | 06P | .0201 |
| Amend/* | | | | |
| <u>State Division of Aging and Adult Responsibilities</u> | 10A | NCAC | 06P | .0401 |
| Amend/* | | | | |

The rules in Subchapter 6R concern adult day care standards for certification and include introduction (.0100); definition of terms (.0200); administration (.0300); the facility (.0400); program operation (.0500); certification procedure (.0600); construction requirements for day care home (.0700); certification information (.0800); and special care for persons with alzheimer's disease or other dementias, mental health disabilities or other special needs diseases or conditions in adult day care centers (.0900).

| | | | | |
|---|-----|------|-----|-------|
| <u>Certification Requirement</u> | 10A | NCAC | 06R | .0101 |
| Amend/* | | | | |
| <u>Corrective Action</u> | 10A | NCAC | 06R | .0102 |
| Amend/* | | | | |
| <u>Definitions</u> | 10A | NCAC | 06R | .0201 |
| Amend/* | | | | |
| <u>Governing Body</u> | 10A | NCAC | 06R | .0301 |
| Amend/* | | | | |
| <u>Agreements</u> | 10A | NCAC | 06R | .0303 |
| Amend/* | | | | |
| <u>Personnel Centers Home With Operator and Staff</u> | 10A | NCAC | 06R | .0305 |
| Amend/* | | | | |
| <u>Personnel Day Care Homes Only Staff Person Is Operator</u> | 10A | NCAC | 06R | .0306 |
| Amend/* | | | | |
| <u>Building Construction</u> | 10A | NCAC | 06R | .0402 |
| Amend/* | | | | |
| <u>Equipment and Furnishings</u> | 10A | NCAC | 06R | .0403 |
| Amend/* | | | | |
| <u>Planning Program Activities</u> | 10A | NCAC | 06R | .0501 |
| Amend/* | | | | |
| <u>Nutrition</u> | 10A | NCAC | 06R | .0502 |
| Amend/* | | | | |

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|--|--------------------|
| <u>Transportation</u> Amend/* | 10A NCAC 06R .0503 |
| <u>Emergencies and First Aid</u> Amend/* | 10A NCAC 06R .0504 |
| <u>Medications</u> Amend/* | 10A NCAC 06R .0505 |
| <u>Hours and Days of Operations</u> Amend/* | 10A NCAC 06R .0506 |
| <u>Availability and Accessibility of Program Policies</u> Amend/* | 10A NCAC 06R .0507 |
| <u>Records</u> Amend/* | 10A NCAC 06R .0508 |
| <u>Procedure</u> Amend/* | 10A NCAC 06R .0601 |
| <u>Residential Building Code Requirements</u> Amend/* | 10A NCAC 06R .0701 |
| <u>Fire and Safety Requirments</u> Amend/* | 10A NCAC 06R .0702 |
| <u>Other</u> Amend/* | 10A NCAC 06R .0703 |

The rules in Subchapter 6S concern adult day health standards for certification and include introduction and definitions (.0100); administration (.0200); facility requirements for centers and homes (.0300); program operation (.0400); certification information (.0500); and special care for persons with alzheimer's disease or related disorders, mental health disabilities, or other special needs diseases or conditions in adult day care centers (.0600)

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|--|--------------------|
| <u>Definitions</u> Amend/* | 10A NCAC 06S .0102 |
| <u>Staffing Pattern</u> Amend/* | 10A NCAC 06S .0203 |
| <u>Staff Requirements</u> Amend/* | 10A NCAC 06S .0204 |
| <u>Requirements</u> Amend/* | 10A NCAC 06S .0301 |
| <u>Additional Enrollment and Participation Requirements</u> Amend/* | 10A NCAC 06S .0402 |
| <u>Health and Personal Care Services</u> Amend/* | 10A NCAC 06S .0403 |
| <u>Transportation</u> Amend/* | 10A NCAC 06S .0404 |
| <u>Emergencies and First Aid</u> Amend/* | 10A NCAC 06S .0405 |

CHILD CARE COMMISSION

The rules is Chapter 9 concern child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provision al and temporary licenses (.0400); age appropriate activities for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center

requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); and voluntary rated licenses (.2800).

Quality Point Options 10A NCAC 09 .2823
Amend/*

BUILDING CODE COUNCIL

2006 Residential Code Item B-2 11 NCAC 08
Adopt/*

614 Partial Sprinkler Protection in One-And Two-Family D... 11 NCAC 08
Amend/*

LABOR, DEPARTMENT OF

The rules in Chapter 7 are from the Commissioner of Labor and cover the Occupational and Safety Health Act (OSHA).

The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); and blasting and use of explosives (.0700).

Definitions 13 NCAC 07F .0602
Amend/*

The rules in Chapter 15 pertain to elevators and amusement devices and include general provisions (.0100); various industry codes and standards (.0200); elevators and related equipment (.0300); amusement devices (.0400); penalties (.0500); forms (.0600); and fees (.0700).

Regulation of Waterslides 13 NCAC 15 .0440
Adopt/*

MARINE FISHERIES COMMISSION

The rules in Chapter 3 are from the Marine Fisheries Commission.

The rules in Subchapter 3I are general and miscellaneous rules.

Definitions 15A NCAC 03I .0101
Amend/*

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

Stone Crabs 15A NCAC 03L .0208
Adopt/*

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

Recreational Fishing Tournament License to Sell Fish 15A NCAC 03O .0102
Amend/*

Display of Licenses and Registrations 15A NCAC 03O .0106

Amend/*

Lost License Replacement 15A NCAC 03O .0107
Amend/*

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

Primary Nursery Areas 15A NCAC 03R .0103
Amend/*

SOIL AND WATER CONSERVATION COMMISSION

The rules in Chapter 6 are from the Soil and Water Conservation Commission.

The rules in Subchapter 6G concern conservation reserve enhancement program (CREP)-State portion of the program and include conservation reserve (.0100).

Objectives 15A NCAC 06G .0101
Amend/*

Eligibility 15A NCAC 06G .0102
Amend/*

Conservation Plan 15A NCAC 06G .0103
Amend/*

Approving State Agreements 15A NCAC 06G .0104
Amend/*

Payment 15A NCAC 06G .0105
Amend/*

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission. The rules in Subchapter 7K set out activities in areas of environmental concern (AECs) which do not require a Coastal Area Management Act (CAMA) permit. These include activities that are not considered development (.0100); exempt minor maintenance and improvement (.0200); and exempt federal agency activities (.0400).

Single Family Residences Exempted 15A NCAC 07K .0208
Amend/*

WATER POLLUTION CONTROL SYSTEM OPERATOR CERTIFICATION COMMISSION

The rules in Chapter 8 are from the Water Pollution Control System Operators Certification Commission.

The rules in Subchapter 8G concern authority organization structure definitions and include general purpose and definitions (.0100); duties and responsibilities (.0200); classification of water pollution control systems (.0300); eligibility requirements for examinations (.0400); certification by examination (.0500); certification without examination (.0600); renewal of certification (.0700); disciplinary actions (.0800); contract operation of water pollution control systems (.0900); rule making procedures and petitions for regulatory activity (.1000); and administrative duties (.1100).

Definitions 15A NCAC 08G .0102
Amend/*

Requirements for Certified Operators 15A NCAC 08G .0201
Amend/*

Responsibilities of System Owners 15A NCAC 08G .0202
Amend/*

Responsibilities of All Certified Operators 15A NCAC 08G .0203

| | |
|---|--------------------|
| Amend/* | |
| <u>Responsibilities of An Operator In Responsible Charge</u> | 15A NCAC 08G .0204 |
| Amend/* | |
| <u>Responsibilities of a Back-Up Operator In Responsible Charge</u> | 15A NCAC 08G .0205 |
| Amend/* | |
| <u>Applicability</u> | 15A NCAC 08G .0301 |
| Amend/* | |
| <u>Classification of Biological Water Pollution Control Trea...</u> | 15A NCAC 08G .0302 |
| Amend/* | |
| <u>Classification of Water Pollution Control Collections Sys...</u> | 15A NCAC 08G .0303 |
| Amend/* | |
| <u>Classification of Surface Irrigation Water Pollution Cont...</u> | 15A NCAC 08G .0304 |
| Amend/* | |
| <u>Classification of Land Application of Residual Systems</u> | 15A NCAC 08G .0305 |
| Amend/* | |
| <u>Classification of Physical/Chemical Water Pollution Control</u> | 15A NCAC 08G .0306 |
| Amend/* | |
| <u>General Requirements</u> | 15A NCAC 08G .0401 |
| Amend/* | |
| <u>Eligibility Requirements for Biological Water Pollution C...</u> | 15A NCAC 08G .0402 |
| Amend/* | |
| <u>Eligibility Requirements for Water Pollution Control Coll...</u> | 15A NCAC 08G .0403 |
| Amend/* | |
| <u>Eligibility Requirements for Land Application of Residuals...</u> | 15A NCAC 08G .0404 |
| Amend/* | |
| <u>Eligibility Requirements for Physical/Chemical Water Pollu...</u> | 15A NCAC 08G .0405 |
| Amend/* | |
| <u>Eligibility Requirements for Surface Irrigation Water Pollu...</u> | 15A NCAC 08G .0406 |
| Amend/* | |
| <u>Eligibility Requirements for Subsurface Water Pollution C...</u> | 15A NCAC 08G .0407 |
| Amend/* | |
| <u>Eligibility Requirements for Operator in Training</u> | 15A NCAC 08G .0408 |
| Amend/* | |
| <u>Eligibility Requirements for Conditional Water Pollution ...</u> | 15A NCAC 08G .0409 |
| Amend/* | |
| <u>Reciprocity Certification</u> | 15A NCAC 08G .0410 |
| Adopt/* | |
| <u>Applying for Examination</u> | 15A NCAC 08G .0501 |
| Amend/* | |
| <u>Ineligible Applicants</u> | 15A NCAC 08G .0502 |
| Repeal/* | |
| <u>Examination Administration</u> | 15A NCAC 08G .0503 |
| Amend/* | |
| <u>Examination Grading</u> | 15A NCAC 08G .0504 |
| Amend/* | |
| <u>Examination Reviews</u> | 15A NCAC 08G .0505 |
| Amend/* | |
| <u>Reciprocity Certification</u> | 15A NCAC 08G .0601 |
| Repeal/* | |
| <u>Temporary Certification</u> | 15A NCAC 08G .0602 |
| Amend/* | |
| <u>Temporary Certificate Renewal</u> | 15A NCAC 08G .0603 |

| | | | | |
|---|-----|------|-----|-------|
| Amend/* | | | | |
| <u>Conversion of Voluntary Certification to Mandatory Certif...</u> | 15A | NCAC | 08G | .0604 |
| Repeal/* | | | | |
| <u>Requirements</u> | 15A | NCAC | 08G | .0701 |
| Amend/* | | | | |
| <u>Grounds for Disciplinary Actions</u> | 15A | NCAC | 08G | .0801 |
| Amend/* | | | | |
| <u>Disciplinary Actions</u> | 15A | NCAC | 08G | .0802 |
| Amend/* | | | | |
| <u>Certification Following Disciplinary Actions</u> | 15A | NCAC | 08G | .0803 |
| Amend/* | | | | |
| <u>Contested Case Procedures</u> | 15A | NCAC | 08G | .0804 |
| Amend/* | | | | |
| <u>Annual Report</u> | 15A | NCAC | 08G | .0902 |
| Repeal/* | | | | |
| <u>Petitions for Regulatory Activity</u> | 15A | NCAC | 08G | .1001 |
| Amend/* | | | | |

MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32M concern approval of nurse practitioners (.0100).

| | | | | |
|--|----|------|-----|-------|
| <u>Definitions</u> | 21 | NCAC | 32M | .0101 |
| Amend/* | | | | |
| <u>Nurse Practitioner Registration</u> | 21 | NCAC | 32M | .0103 |
| Amend/* | | | | |
| <u>Process for Approval to Practice</u> | 21 | NCAC | 32M | .0104 |
| Amend/* | | | | |
| <u>Education and Certification Requirements for Registration</u> | 21 | NCAC | 32M | .0105 |
| Amend/* | | | | |
| <u>Inactive Status</u> | 21 | NCAC | 32M | .0108 |
| Amend/* | | | | |

NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); and articles of organization (.0600).

| | | | | |
|---|----|------|----|-------|
| <u>Change of Name</u> | 21 | NCAC | 36 | .0208 |
| Amend/* | | | | |
| <u>Revocation Suspension or Denial of License</u> | 21 | NCAC | 36 | .0217 |
| Amend/* | | | | |
| <u>Temporary License</u> | 21 | NCAC | 36 | .0219 |
| Amend/* | | | | |
| <u>Definitions</u> | 21 | NCAC | 36 | .0801 |
| Amend/* | | | | |
| <u>Nurse Practitioner Registration</u> | 21 | NCAC | 36 | .0803 |
| Amend/* | | | | |
| <u>Process for Approval to Practice</u> | 21 | NCAC | 36 | .0804 |
| Amend/* | | | | |

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| <u>Education and Certification Requirements for Registration...</u> Amend/* | 21 NCAC 36 .0805 |
| <u>Inactive Status</u> Amend/* | 21 NCAC 36 .0808 |

RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and general provisions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); general (.0500); rules (.0600); and administrative hearing procedures (.0700).

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| <u>Definitions</u> Amend/* | 21 NCAC 61 .0103 |
|-------------------------------|------------------|

RECREATIONAL THERAPY LICENSURE, BOARD OF

The rules in Chapter 65 are from the North Carolina Board of Recreational Therapy Licensure and include general provisions (.0100); requirements of practice (.0200); requirements for licensure (.0300); application (.0400); fees (.0500); license renewal requirements (.0600); reinstatement (.0700); inactive status (.0800); reciprocity (.0900) and revocation, suspension or denial of licensure (.1000).

| | |
|--|------------------|
| <u>Name-Short Title</u> Repeal/* | 21 NCAC 65 .0101 |
| <u>Meetings</u> Repeal/* | 21 NCAC 65 .0102 |
| <u>Reciprocity</u> Repeal/* | 21 NCAC 65 .0103 |
| <u>Academic-TRS Examination</u> Repeal/* | 21 NCAC 65 .0104 |
| <u>Provisional TRS</u> Repeal/* | 21 NCAC 65 .0105 |
| <u>Certification Fees</u> Repeal/* | 21 NCAC 65 .0106 |
| <u>Certificate Renewals</u> Repeal/* | 21 NCAC 65 .0107 |
| <u>Revocation and other Sanctions</u> Repeal/* | 21 NCAC 65 .0108 |
| <u>Licensed Recreational Therapist Scope of Practice</u> Adopt/* | 21 NCAC 65 .0203 |
| <u>Licensed Recreational Therapy Assistant Scope of Practice</u> Adopt/* | 21 NCAC 65 .0204 |
| <u>Supervision of a Licensed Recreational Therapy Assistant</u> Adopt/* | 21 NCAC 65 .0205 |
| <u>Minimum Level of Education and Competency for Licensed Re...</u> Adopt/* | 21 NCAC 65 .0302 |
| <u>Application Procedures for Licensed Recreational Therapis...</u> Adopt/* | 21 NCAC 65 .0401 |
| <u>Licensure Fees</u> Adopt/* | 21 NCAC 65 .0501 |
| <u>Practice and Continuing Education Requirements for Licens...</u> Adopt/* | 21 NCAC 65 .0601 |
| <u>Reinstatement of Lapsed License</u> Adopt/* | 21 NCAC 65 .0701 |

RULES REVIEW COMMISSION

| | | | | |
|--|----|------|----|-------|
| <u>Inactive Status</u> Adopt/* | 21 | NCAC | 65 | .0801 |
| <u>Endorsement</u> Adopt/* | 21 | NCAC | 65 | .0901 |
| <u>Investigation of Suspected Violations and Complaints</u> Adopt/* | 21 | NCAC | 65 | .1001 |

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.

Beryl E. Wade

Beecher R. Gray

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>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| Santos Ferman T/A Paraiso vs. ABC Commission | 05 ABC 1828 | Chess | 05/31/06 | |
| Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission | 05 ABC 1989 | Chess | 06/07/06 | |
| Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission | 06 ABC 0719 | Chess | 08/07/06 | |
| ABC Commission v. T/A Minit Shop | 06 ABC 0862 | Morrison | 10/17/06 | |
| <u>CRIME VICTIMS COMPENSATION</u> | | | | |
| Timothy P. Webber v. Crime Victims Compensation Commission | 05 CPS 1568 | Lassiter | 06/08/06 | 21:01 NCR 109 |
| Valerie Joy McGill v. Crime Victims Compensation Commission | 06 CPS 0038 | Gray | 06/08/06 | |
| Torrey Charles v. Crime Victims Compensation Commission | 06 CPS 0051 | Chess | 09/21/06 | |
| Charles Leon Champion v. Crime Victims Compensation Commission | 06 CPS 0155 | Elkins | 06/08/06 | |
| Sharron Smith v. Crime Control and Public Safety | 06 CPS 0708 | Gray | 07/12/06 | |
| Elaine B. Deloatch v. Crime Victims Compensation Commission | 06 CPS 0736 | Wade | 08/15/06 | |
| Christopher Lee Vess v. Crime Control Victims Compensation Services Division | 06 CPS 0890 | Gray | 08/23/06 | |
| Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission | 06 CPS 0909 | Lassiter | 08/01/06 | |
| Tamika L. Howard-Smith v. Crime Victims Compensation | 06 CPS 1161 | | 09/06/06 | |
| Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission | 06 CPS 1492 | Morrison | 09/28/06 | |
| A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions . | | | | |
| <u>DEPARTMENT OF AGRICULTURE</u> | | | | |
| Shacond Muse Bey v. Dept. of Agriculture | 06 DAG 0985 | Morrison | 08/16/06 | |
| <u>DEPARTMENT OF CULTURAL RESOURCES</u> | | | | |
| William H. Miller v. Cultural Resources, State Historic Preservation | 05 DCR 0439 | Mann | 07/03/06 | |
| <u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u> | | | | |
| Andrea Green, Parent, on behalf of her Miner Child, Andrew Price | 01 DHR 2149 | Gray | 06/29/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 02 DHR 1456 | Lassiter | 10/06/06 | |
| Marquelle's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section | 02 DHR 1537 | Gray | 08/21/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 04 DHR 0288 | Lassiter | 10/06/06 | |
| Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS | 04 DHR 1513 | Lassiter | 06/14/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 04 DHR 1662 | Lassiter | 10/06/06 | |
| Rebecca Hamilton, Beck's Play and Learn v. DHHS, Div. of Child Development | 04 DHR 1866 | Lassiter | 10/02/06 | |
| Restoration Church of God in Christ, d/b/a Restoration's Joys of the Heart | 05 DHR 0097 | Elkins | 08/30/06 | |

CONTESTED CASE DECISIONS

| | | | | |
|---|-------------|----------|----------|---------------|
| Child Care Center v. DHHS, Div. of Child Development | | | | |
| Restoration Church of God in Christ Inernation, d/b/a Joys of the Heart | 05 DHR 0124 | Elkins | 08/30/06 | |
| Child Care Center v. DHHS, Div. of Public Health, Child and Adult Care Food Program | | | | |
| Handa of the Future, Sheila Martin v. DHHS, Child and Adult Care Food Program | 05 DHR 0457 | Wade | 06/27/06 | |
| Patricia Filyaw's FCCH vs. Div. of Child Development | 05 DHR 0803 | Gray | 05/30/06 | |
| Amanda M. Walters v. DHHS, DFS, Health Care Personnel Registry Section | 05 DHR 1121 | Chess | 05/30/06 | |
| Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development | 05 DHR 1255 | Lassiter | 09/12/06 | |
| Shari Ann Torain v. DHHS | 05 DHR 1317 | Elkins | 06/08/06 | |
| Delfina Harris v. DHHS, DFS | 05 DHR 1344 | Wade | 10/11/06 | |
| 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 115 |
| Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities | 05 DHR 1427 | Chess | 05/17/06 | |
| United Home Care, Inc v. DHHS, DFS, CON Section and Liberty Home Care II, LLC, Total Care Home Health of NC, INC., | 05 DHR 1456 | Wade | 06/19/06 | |
| Total Care Home Health of NC, INC., v. DHHS, DFS, CON Section and Liberty Home , Care II, LLC, Total Care Home Health of NC, INC., | 05 DHR 1464 | Wade | 06/19/06 | |
| Brookside Montessori School v. DHHS, Div. of Child Development | 05 DHR 1465 | Gray | 06/28/06 | |
| 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 | |
| Shannon Woodell Glidewell v. DHHS, DFS | 05 DHR 1514 | Gray | 09/29/06 | |
| LaBrenda Perry Bennett v. Health Care Personnel Registry | 05 DHR 1579 | Morrison | 07/13/06 | |
| Lisa D. Smith-Perri on behalf of Gibson Price Smith, Brother | 05 DHR 1982 | Gray | 06/26/06 | |
| All Braxton, The Braxton Home II v, DHHS, DFS | 05 DHR 1986 | Mann | 07/20/06 | |
| Bertha Graham v. DHHS, DFS, Health Care Personnel Registry | 05 DHR 2040 | McCotter | 06/08/06 | |
| Jeanette Clark v. State Board of Nursing, Raleigh, NC | 05 DHR 2076 | Gray | 07/10/06 | |
| Yavonka Renee Vann v. DHHS, DFS | 05 DHR 2108 | Gray | 07/12/06 | |
| Janet Johnson v. Health Care Personnel Registry | 05 DHR 2127 | Gray | 08/15/06 | |
| Zion Hill Ame Zion Church, Child Development Center v. DHHS, Div. of Child Development | 05 DHR 2184 | Gray | 07/12/06 | |
| Steven Thomas Safrit v. DHHS | 05 DHR 2191 | Mann | 06/20/06 | |
| Rosa Currie v. DHHS | 05 DHR 2204 | Elkins | 09/26/06 | |
| Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section | 05 DHR 2225 | Lassiter | 05/10/06 | |
| | | | | |
| Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section, Licensure and Certification Section and Liberty Home Care II, LLC | 06 DHR 0018 | Elkins | 09/28/06 | |
| Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section and DHHS, DFS, Licensure and Certification Section | 06 DHR 0022 | Elkins | 09/14/06 | 21:07 NCR 674 |
| Jacqueline Hall v. DHHS, Div. of Child Development | 06 DHR 0025 | Lassiter | 08/31/06 | |
| Joshua B. Worley, by and through his Guardian as Litem, Bertha Gail Levi v. DHHS, Div. of Medical Assistance | 06 DHR 0033 | Mann | 09/11/06 | 21:09 NCR 854 |
| Richard Wayne Baird v. DHHS, DMA | 06 DHR 0177 | Gray | 06/15/06 | |
| Rosemary Nwanko v. DHHS, DFS, Mental Health Licensure and Certification Section | 06 DHR 0186 | Gray | 07/12/06 | |
| JoAnn Baldwin v. DHHS, DFS, Child and Adult Care Food Program | 06 DHR 0208 | Wade | 06/27/06 | |
| Joyce Moore v. DHHS | 06 DHR 0212 | Morrison | 08/15/06 | |
| Jansala Walker v. Healthcare Personnel Registry | 06 DHR 0213 | Wade | 06/07/06 | |
| Bobby Locklear v. DHHS, DFS, Adult Licensure Section | 06 DHR 0215 | Mann | 06/20/06 | |
| Linwood B. Cameron d/b/a New Millennium Management Services v. DFS | 06 DHR 0218 | Elkins | 06/08/06 | |
| Selvia Chapel Child Care Center ID# 74000208, Bishop A. H. Hartsfield v. DHHS, Div. of Child Development | 06 DHR 0268 | Gray | 08/21/06 | |
| Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 0271 | Gray | 05/17/06 | |
| Jack Williamson v. Div. of Medical Assistance Third Party Recovery | 06 DHR 0300 | Chess | 08/04/06 | |
| Shawqi Abdalla Ibtisam Omar v. OAH | 06 DHR 0332 | Gray | 07/10/06 | |
| Daniel Marshall v. DHHS | 06 DHR 0340 | Wade | 06/27/06 | |
| Katie Morris v. DHHS | 06 DHR 0344 | Gray | 08/21/06 | |
| Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS | 06 DHR 0358 | Elkins | 07/31/06 | |
| Angel Allman v. Div. of Medical Assistance Medical Policy | 06 DHR 0370 | Wade | 08/09/06 | |
| Tammie L. Greene v. DHHS, Div. of Medical Assistance | 06 DHR 0386 | Chess | 07/25/06 | |
| Carol Denny v. DHHS | 06 DHR 0395 | Mann | 09/05/06 | |
| Myrna Diane Bunns v. DHHS, Division of Child Development | 06 DHR 0399 | Gray | 06/19/06 | |
| Joseph Randy Creech v. Dix, DHHS | 06 DHR 0416 | Mann | 09/06/06 | |
| 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 | |
| Daisey Fish v. Dorthea Dix Hospital | 06 DHR 0473 | Morrison | 08/02/06 | |
| Delisa Jean Scott v. DHHS, DFS | 06 DHR 0475 | Elkins | 06/23/06 | |

CONTESTED CASE DECISIONS

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| Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 0488 | Gray | 05/17/06 | | |
| Myrna A. Batson v. Broughton Hospital | 06 DHR 0503 | Gray | 07/12/06 | | |
| Digna A. Marte v. DHHS, Div. of Medical Assistance | 06 DHR 0551 | Mann | 07/21/06 | | |
| Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS | 06 DHR 0565 | Lassiter | 08/01/06 | | |
| Eric Becton v. DHHS | 06 DHR 0594 | Elkins | 06/23/06 | | |
| Bibian Nwanguma v. Health Care Personnel Registry | 06 DHR 0651 | Wade | 08/14/06 | | |
| Regina A McLean v. DHHS, Citizen Affairs/Administration | 06 DHR 0691 | Gray | 06/27/06 | | |
| Regina A. Mclean v. Human Health Client Assistant Program | 06 DHR 0692 | Gray | 07/20/06 | | |
| Christy Laws v. DHHS | 06 DHR 0698 | Elkins | 09/07/06 | | |
| Kara Elmore v. DHHS, DFS | 06 DHR 0702 | Gray | 08/23/06 | | |
| James Soules v. DHHS | 06 DHR 0718 | Gray | 08/01/06 | | |
| DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect | 06 DHR 0720 | Lassiter | 06/14/06 | | |
| Angela M. Rhodes v. New Hanover County DSS | 06 DHR 0730 | Mann | 09/05/06 | | |
| Full Potential, LLC v. DHHS | 06 DHR 0781 | Gray | 07/21/06 | | |
| Alberta Denise Murphy v. DHHS and Registry | 06 DHR 0788 | Elkins | 09/07/06 | | |
| Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL | 06 DHR 0830 | Gray | 06/28/06 | | |
| Rockingham County Department of Social Services v. Medicaid/Value Options | 06 DHR 0839 | Lassiter | 08/01/06 | | |
| Denise Little v. Catawba County LME, John Hardy, Director Consultant Deanna Hoxworth | 06 DHR 0860 | Lassiter | 06/23/06 | | |
| Edna Cray - Kid's Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program | 06 DHR 0887 | Gray | 06/13/06 | | |
| Norman Lavel Bracey, Jr., v. Social Services (Medicaid) | 06 DHR 0955 | Gray | 07/21/06 | | |
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| Lisa A. Forbes v. Dorothea Dix Hospital | 06 OSP 0135 | Gray | 03/29/06 | | |
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| Krista Singletary v. UNC Hospitals | 06 UNC 0468 | Mann | 10/12/06 | | |
| Larry E. Rogers v. UNC Hospitals | 06 UNC 0697 | Elkins | 07/31/06 | | |
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CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 DHR 0033

JOSHUA B. WORLEY, by and through his)
Guardian ad Litem, **BERTHA GAIL LEVI**,)
Petitioner,)
)
vs.)
)
N.C. DEPT. OF HEALTH & HUMAN)
SERVICE, Division of Medical Assistance,)
)
Respondent.)
_____)

DECISION

This contested case was heard before Julian Mann, III, Chief Administrative Law Judge, on July 5, 2006, in Asheville, N.C.

APPEARANCES

Attorney for Petitioner:
Curtis B. Venable
Pisgah Legal Services
P.O. Box 2276
Asheville, N.C. 28802

Attorney for Respondent:
Diane M. Pomper
Assistant Attorney General
P.O. Box 629
Raleigh, N.C. 27602-0629

JURISDICTION

As Stipulated by the parties:

This matter is in the appropriate forum and venue. This matter was filed in a timely and appropriate fashion. All parties necessary were joined.

ISSUE

As Stipulated by the parties:

Is there adequate justification as to why the relative is the provider of care?

BURDEN OF PROOF

As Stipulated by the parties:

Petitioner has the burden of proof in this matter.

DOCUMENTARY MATERIALS & EVIDENCE

As Stipulated by the parties:

Legal Authority:

- 1915(c) Waiver Application, dated September, 30, 2004.
- Centers for Medicare/Medicaid Services, Approval letter, dated June 30, 2005.
- Centers for Medicare/Medicaid Services, State Medicaid Manual, Section 4442.3B.
- 10A N.C.A.C. 27G .0104(14), paraprofessional definition.

Interpretative Manual/Guidelines:

- Community Alternatives Program MR/DD Manual
- Division of Mental Health, Developmental Disabilities & Substance Abuse Services, Person-Centered Planning Guidelines, date March, 2005.

As Stipulated by the parties as to the authenticity, relevancy and admissibility:

- Petitioner's Annual Plan of Care, dated 4/5/05, Respondent's Ex. 1
- Plan Update/Revision, dated 9/1/05, Respondent's Ex. 2
- Plan Update/Revision, dated 9/12/05, Petitioner's Ex. 1
- Plan Update/Revision, dated 11/1/05, Petitioner's Ex. 2, Respondent's Ex. 3
- Plan Update/Revision, dated 12/1/05, Respondent's Ex. 4

- Letter of Denial, Western Highlands, dated 9/8/05, Petitioner's Ex. 3
- Letter of Denial, Western Highlands, dated 11/09/05, Petitioner's Ex. 4, Respondent's Ex. 5
- Excerpts of Respondent's Community Alternatives Program-MR/DD Manual, Respondent's Ex. 6
- Psychological Evaluation by Michael S. Grandis dated 8/30/05, Respondent's Ex. 7
- Vocational Rehabilitation Progress Review dated 10/25/05, Respondent's Ex. 8
- Electronic message to Jesse Smathers from Bertha Gail Levi, dated 11/14/05, Respondent's Ex. 9
- Centers for Medicare/Medicaid Services, Approval letter, dated June 30, 2005 and 1915(c) Waiver Application, dated September, 30, 2004, Respondent's Ex. 10

OTHER STIPULATIONS

Community Alternatives Program (CAP) MR/DD

The parties stipulated that at all times relevant to this matter Petitioner was and continues to be eligible for the Community Alternative Program for Persons with Mental Retardation/ Developmental Disabilities. The parties stipulated that a legal guardian may provide waiver services to CAP-MR/DD recipient/ward.

Petitioner

The parties stipulated that Petitioner:

- is age 21;
- resides with his mother;
- is subject to a guardianship, with his mother serving as his guardian;
- is diagnosed with Personality Disorder due to Medical Condition – Combined Type: Disinhibited & Aggressive, Mild Mental Retardation, Moyamoya Disease (a progressive cerebrovascular disorder caused by blocked arteries at the base of the brain in an area called the basal ganglia); Transcerebral Ischemia; History of Major Motor Seizure/Petit mal absent; and, Asthma;
- is appropriate for Supported Employment Services; and,
- currently receives paraprofessional services delivered by his mother.

WITNESSES

Witnesses for Petitioner:

- Gail Levi, Petitioner's mother
- David Piper, Qualified mental health professional, Mountain Area Community Services (by deposition)

Witnesses for Respondent:

- Jesse Smathers, CAP-MR/DD coordinator, Western Highland Area Authority
- Dalton McCrary, Case manager, Skills Creation
- Vivian Leon, CAP-MR/DD manager, North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

APPLICABLE LEGAL AUTHORITIES

Supported Employment:

- Is for persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
- Is conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and
- Is supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training and transportation.

State Medicaid Manual, §4442.3 B.3(c) (available at: http://www.cms.hhs.gov/manuals/downloads/P45_04.zip).

The qualifications for the staff who deliver Supported Employment services are:

Worker Qualifications: must meet requirements for paraprofessional in 10A NCAC 27G .0100-.0200. Client specific competencies to be met as identified by the individual's person centered planning team and documented in the plan of care. Direct care staff must have a criminal record check. A healthcare registry check is required in accordance with 10A NCAC 27G.0200. Driving record must be checked if providing transportation.

N.C. 1915(b) Home and Community Based Services Waiver, approved June 30, 2005, p. 49 (available at <http://www.dhhs.state.nc.us/mhddsas/developmentaldisabilities/operations/capwaiver10-04a-f.pdf>).

The standards for paraprofessional, as defined in 10A N.C.A.C. 27G .0103:

"Paraprofessional" within the mh/dd/sas [mental health/developmental disabilities/substance abuse services] system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.

The federal Centers for Medicare and Medicaid Services note a "consideration" concerning the delivery of a waiver service, such as that in question in this action, Supported Employment:

B. Considerations Related to Specific Services.—

1. FFP [Federal Financial Participation] is not available for personal care services or any waiver services when provided to recipients by legally responsible relatives, i.e., spouses or parents of minor children, when the services are those that these persons are already legally obligated to provide.

2. Services provided by relatives or friends, except as noted in item B.1., may be covered only if the relatives or friends meet the qualifications for providers of care, there are strict controls to assure that payment is made to the relative or friend as providers only in return for specific services rendered, and there is adequate justification as to why the relative or friend is the provider of care, e.g., lack of other qualified provider in remote areas. Medicaid payment may be made to qualified parents of minor children or to spouses for extraordinary services requiring specialized skills (e.g., skilled nursing, physical therapy) which such people are not already legally obligated to provide.

State Medicaid Manual, §4442.3

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

FINDINGS OF FACT

Petitioner

1. Petitioner, Mr. Worley, is 21 years old and lives with his mother, who is his guardian. (Joint Pre-Trial Order, filed July 5, 2005). His grandparents' live on the same tract of land and can, depending on their own health issues, provide care. (Respondent's Ex. 1, p. 4, T pp. 15, 86-87)

2. Petitioner presents as a large individual, 5'7", 210 lbs. (Respondent's Ex. 1, p. 9, Piper Deposition, pp. 12, 39)

3. Petitioner is diagnosed with Personality Disorder due to Medical Condition – Combined Type: Disinhibited & Aggressive, Mild Mental Retardation, Moyamoya Disease (a progressive cerebrovascular disorder caused by blocked arteries at the base of the brain in an area called the basal ganglia); Transcerebral Ischemia; History of Major Motor Seizure/Petit mal absent. (Joint Pre-Trial Order, filed July 5, 2005; T pp. 37, 67, 97-99; Piper Deposition, p. 9; Respondent's Ex. 1, p. 3). His last stroke occurred at age 13. (T. p. 71)

4. Petitioner's most recent psychological assessment (dated August 30, 2005) found him to fall within a moderate to mild range of mental retardation. "He displayed relative strengths for tools, domestics, and health and safety, suggesting that he possesses some practical daily skills. As was suggested with the Vineland Adaptive Behavioral Scales, [Petitioner] functions at a very low level with regard to basic concepts. He maintains only a rudimentary understanding of time, money or measurements. Nevertheless, when compared to a group of neuropsychologically disabled adults, he functions fairly well given his disabilities." (Respondent's Ex. 7, p.3) Petitioner's Vineland Adaptive Behavioral Scales showed a composite score of 41, which resulted in a finding that he possesses the adaptive behavioral skills of an individual of age six years, seven months. (*Id.* at p. 4)

5. Petitioner, at the time of hearing was prescribed a variety of medication. As noted in Petitioner's Medical Information with his CAP-MR/DD Plan of Care (Respondent's Ex. 1, pp. 3-4):

- a. Risperdal (Improve clarity, reality basing);
- b. Topamax (Helps Seizure control);
- c. Lamictal (Helps Seizure control);
- d. Diclofenac (Cataflan) (Analgesic – Headache pain; anti-inflammatory);
- e. Baby aspirin (Blood thinner, reduces strokes);

- f. Ranitidine (Acid Reflux);
- g. Lexapro (Irritability, anxiety);
- h. Tylenol #3 (pain in legs);
- i. Nexium (Acid Reflux);
- j. Rhinocort Aqua (Allergies);
- k. Allergy shots (Allergies);
- l. Singular (Allergies/asthma); and
- m. Albuterol (asthma).

6. Petitioner’s mother’s testimony confirmed the above listing at the time of the hearing. (T p. 34). She described Risperdal as “supposedly given for obsessive-compulsive disorder, meaning that it should help [Petitioner] with being fixated and worrying about stuff all the time about what he wants and all—and it does help some but not all the way.” (*Id.*)

7. The listed neurological impairments result in behaviors that are rare, both in their unpredictability and severity. In the opinion of Mr. Piper, who serves as a Qualified Developmental Disabilities Professional and supervises Petitioner’s services, Petitioner “is probably one of the most unique cases I’ve ever had in my 30 or 40 years experience.” (Piper Deposition p. 8)

8. One the complicating factors in working with Petitioner is his unpredictability. Mr. Piper described: “And that’s what makes [Petitioner] very unique, that you’ll be sitting there and talking to him, and all of sudden you’ll lose eye contact, and he’ll just get up and walk off, almost like a horse with blinders. . . . And you can call after him, and there’s no answer. You don’t know when this is going to occur. You don’t know why it occurred.” (Piper Deposition pp. 9-10)

9. Petitioner demonstrates rapid, unpredictable mood shifts with threatening behaviors. (T pp. 36, 37-39, 41, 108, Piper Deposition p. 9, Respondent’s Ex. 1 p. 8)

10. While Petitioner can appropriately engage with others in public settings, he is subject to disruptive behaviors, such as throwing food, upsetting store displays and yelling obscenities at black store patrons. (Piper Deposition p. 15, T pp. 18, 39, 59) He will often present as a shy individual with females in public, while behaving defensively with males. (T pp. 44-45)

11. Responding to Petitioner’s aggressive behaviors oftentimes requires counter-intuitive actions. Attempting to restrain Petitioner has the effect of escalating his behaviors and instigating a physical altercation. (T pp. 32, 39, 42, Respondent’s Ex. 1, pp. 9-13)

12. Petitioner, while verbal, is inarticulate, often resorting to cursing, which increases the difficulties of understanding his needs and the monitoring of his behaviors. (T pp. 38, 41, 43-44, 92, Respondent’s Ex. 1 pp. 8, 13)

13. Petitioner can be verbally aggressive toward individuals; threatening to “burn your house down,” “kill your dog,” and actually damage vehicles by throwing stones. (Piper Deposition, p. 11, T p. 42, Respondent’s Ex. 1, p. 9)

14. Petitioner is prone to gastrointestinal pain, which is difficult for Petitioner to articulate. (T p. 40) Petitioner’s legs can unexpectedly go weak, causing him to fall. (Respondent’s Ex. 1, p. 10) Petitioner needs prompting and assistance with toileting. (Respondent’s Ex. 1, pp. 18-19)

15. While Petitioner presents with numerous challenges, he can present an enjoyable, engaging side. He can tell a joke and express a sense of humor. (Piper Deposition p. 13) He can enjoy riding a go-cart or all terrain vehicle, playing with friends and listening to music. (T pp. 49, 59, 88)

Petitioner’s Socialization

16. Neighbor children periodically visit with Petitioner. He regularly accompanies his mother on shopping trips, even interacting with store clerks to set up purchases on layaway. The family periodically takes Petitioner to public eating spots for meals. (T pp. 58-60, 87)

17. Petitioner has deficiencies in social interaction with females. (Piper Deposition, p. 13)

18. Petitioner’s most recent psychological evaluation, showed socialization to be a “relative strength,” with a Vineland Adaptive Behavioral Scale of 61. The evaluator commented:

[Petitioner] is capable of making and keeping appointments. He watches television for practical day-to-day information. He maintains a hobby and initiates conversational topics of particular interest to others. He will apologize for mistakes or errors in judgment. He is capable of keeping secrets or confidences for as long as is appropriate. [Petitioner] is prone to make statements which may embarrass or hurt others. He has difficulty in controlling his anger or hurt feelings when denied his own way. Often times he does not use appropriate table manners unless told to do so. He does not tend to independently weigh consequences of actions before making decisions.

(Respondent's Ex. 7, pp. 3-4)

19. Petitioner's approved Plan of Care contains no specific goals concerning socialization. (Respondent's Ex. 1) Western Highland's staff, in reviewing the Plan of Care, made no suggestions for socialization goals. (T p. 125)

20. Petitioner, on his own initiative obtained a job at Food Lion. He requested of the manager the opportunity to work while his mother was shopping. (T pp. 60-61)

CAP-MR/DD Services

21. The parties stipulated that Petitioner was and continues to be eligible for the Community Alternative Program—Mental Retardation/Developmentally Disabled (CAP-MR/DD). (Joint Pre-Trial Order, filed July 5, 2005) CAP-MR/DD services approved, pursuant to Petitioner's Plan of Care and Plan Update/Revision (dated November 1, 2005), included Home and Community Support – Individual, Respite Care – Non-Institutional – Individual, Supported Employment – Individual. (Petitioner's Ex. 2)

22. Western Highlands Area Authority staff member Jesse Smathers reviewed Petitioner's Plan of Care. (T pp. 119-120). Upon a second submission, a denial of the request for Petitioner's mother to deliver Supported Employment was issued due to the finding "we did not feel there was justification for the mother to provide the services—this additional service, taking into consideration that she was already providing fifty-six hours of service." (T pp. 120-21)

23. Information taken into account by Western Highland's staff in making the decision subject to this appeal was the Plan of Care, the submission for changes to the Plan of Care and Petitioner's August 30, 2005 psychological evaluation. (T p. 122-25). Mr. Smathers had not met nor visited with Petitioner nor his mother. (T 69-70)

24. Petitioner's case management services have been delivered by Dalton McCrary of Skills Creation for two years. (T pp. 26-7, 103-4) In delivering this service, Ms. McCrary visits with Petitioner and his mother at their home at least one time per month. Phone contact between Ms. McCrary and Petitioner's mother occurs at least two times per month. (T pp. 26, 105)

25. Petitioner's mother currently delivers the CAP-MR/DD service of Home and Community Support to Petitioner at the rate of eight hours per day, fifty-six hours per week. (T p. 19) She is employed by Mountain Area Community Services and supervised by David Piper. (T p. 25, Piper Deposition, p. 7)

26. Mr. Piper, presently, is the director of developmental disability services for Mountain Area Community Services. He has a B.A. in psychology, a M.A. in psychology, a masters in special education. His employment history includes coordinator of CAP-MR/DD services for the previous Blue Ridge Area Authority and regional director of various developmental disability services firms. Mr. Piper has at least 30 years experience. (Piper Deposition, pp. 4-6, 8)

27. Mr. Piper is a qualified developmental disabilities professional. (Piper Deposition, p. 5) In carrying out his supervision of the services delivered to Petitioner, Mr. Piper visits Petitioner's home at least one time per month for face to face contact with Petitioner and his mother. He will also visit with Petitioner individually once or twice each month. Mr. Piper speaks with Petitioner's mother by telephone at least once each week. (T pp. 24-25, Piper Deposition, pp. 7-8)

28. Mr. Piper has maintained contact with Petitioner and his family for more than ten years, while working for four different agencies. In each instance, he was the qualified developmental disabilities professional supervising services delivered to Petitioner. (T p. 25, Piper Deposition, p. 6-7).

29. Maintaining staff for Petitioner has been a continuing challenge. At least 17 different individuals have been tried with Petitioner over the past five years. (T pp. 27-8, Piper Deposition, pp. 16-17) Mr. Piper noted, "I think I've had more staff—attempting to work more staff with this family than any other family I've ever worked with." (Piper Deposition, p. 15)

30. Petitioner's adverse reactions to females, older individuals, and African-Americans make the use of these individuals problematic. (Piper Deposition, p. 16, T p. 18) Prospective staff have declined to work with Petitioner subsequent to meeting with him. (Piper Deposition, p. 12) Staff have worked with Petitioner for a limited period of time and left for better paying employment or to return to school. (Piper Deposition, pp. 16, 32, T pp. 28-9, 30) Other staff departed subsequent to safety concerns, threats or actual altercations with Petitioner. (Piper Deposition, pp. 11-12, T pp. 30-33)

31. Staff consistency is important to Petitioner and staff turnover is detrimental to him. (T p.107, Piper Deposition, pp. 10, 17) The inconsistency of staff, in turn, creates in Petitioner a sense of insecurity. (T p. 56)

Delivery of Services by Petitioner's Mother

32. It was stipulated that Petitioner's mother presently delivers paraprofessional CAP-MR/DD services to Petitioner. (Joint Pre-Trial Order, filed July 5, 2005)

33. Review of the outcome data collected, showed Petitioner was successfully completing goals in 13 of 15 areas, putting him in the twelfth percentile of the 32 clients presently supervised by Mr. Piper. (Piper Deposition, p. 21)

34. Petitioner's mother complies with Petitioner's Plans of Care and her skills have grown over time and accomplished good results for Petitioner. (Piper Deposition, pp. 19-21)

35. Petitioner's mother brings a variety of strengths: she wants the best for her son; she demonstrates patience and understanding; and she can "read" Petitioner correctly and respond appropriately. Mr. Piper testified, "So looking at this from the standpoint of one of my employees—she has the characteristics that I readily search for and seek out in an individual. She's a joy to supervise because she follows—at least she follows my directives very well, and I've been advising for ten years, and she's done that very well." (Piper Deposition, pp. 18-19, 34)

Supported Employment Service

36. The parties stipulated that Petitioner can receive Supported Employment services. (Joint Pre-Trial Order, filed July 5, 2005) No evidence was presented that Petitioner's mother was unqualified to furnish the service in question, Supported Employment.

37. Petitioner was motivated to obtain a job upon his own initiative. He possesses the ability to hold a job and is motivated by money. (Piper Deposition, p. 25)

38. Presently Petitioner works at a grocery store several hours each week cleaning restrooms, accompanied by his mother. (Respondent's Ex. 3, pp. 1-2) This paid work is unsupervised and unsupported by Petitioner's CAP-MR/DD Plan of Care. No goals have been established for the activity and there is no supervised interaction with the store management. Petitioner's employment is presently aided exclusively by natural supports. (T pp. 65-66, 93)

39. Petitioner's paid activities present an opportunity for Petitioner to learn skills useful in enhancing his independence. If conducted in the context of Supported Employment, the paid activities would occur subject to the supervision of a qualified developmental disabilities professional and pursuant to the goals developed for the Plan of Care. (Piper Deposition, p. 24)

40. The testimony of the witnesses Levi, Piper and McCrary is each found to be credible, based on the demeanor of the witnesses, the supporting records, the detail and consistency of their testimony, and other observations of the fact finder. Their testimony is given due weight based upon their relevant experience with and training in working with individuals with developmental disabilities, their knowledge of and history with Petitioner, and their visits and interactions with Petitioner and his family at Petitioner's home and in the community.

41. The testimony of Mr. Piper is accorded significant weight due to his extensive experience in the field of developmental disabilities services and his extensive, direct professional history with Petitioner and Petitioner's family.

42. The testimony of witnesses Leon and Smathers, while credible, is accorded less weight due to their lack of direct knowledge of Petitioner, his impairments, his history of services, and his environment.

Based upon the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence of the whole record, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 150B of the N.C. General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. The N.C. Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to Chapters 150B and 108A of the N.C. General Statutes and applicable federal law.

4. The Medicaid program is jointly financed with federal and state funds "and is basically administered by each state within certain broad requirements and guidelines." House Subcomm. On Health and the Environment, Data on the Medicaid Program: Eligibility, Services, Expenditures Fiscal Years 1967-77, H.R. Rep. No. 10, 95th Cong., 1st Sess. 1. The state determines the scope of the services offered and generally determines the eligibility level for the programs. *Id.* The Act implements a federal-state joint venture in which participating states administer a Medicaid program developed by the state within the parameters established by federal law and regulations. Generally, the Medicaid Act consists of numerous sections and subsections that together form a cooperative mosaic through which the federal government reimburses a portion of the payments made by participating states to providers furnishing care to eligible persons. *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531 (1981).

5. The Medicaid program provides a federal subsidy to states that choose to reimburse qualified individuals for certain medical expenses. See 42 U.S.C. § 1396 et seq. Although participation in the program is voluntary, states which choose to participate in the Medicaid program must comply with federal Medicaid law. 42 U.S.C. § 1396a(a).

6. The Community Alternatives Program-Mental Retarded/Developmentally Disabled (CAP-MR/DD) is a Medicaid waiver program permitted under 42 U.S.C. § 1396n(c) which provides for home or community-based services to eligible individuals beyond what would normally be provided by Medicaid. This specific waiver allows North Carolina to pay for home and community-based services for an individual who would otherwise need institutionalization in an Intermediate Care Facility for the Mentally Retarded

(ICF-MR). 42 U.S.C. § 1396n(c). It was stipulated by the parties that Petitioner qualifies for these services.

7. The federal agency overseeing the Medicaid program, the Centers for Medicare and Medicaid Services (CMS) directs the states' Medicaid programs by means of rules and its State Medicaid Manual (SMM). With respect to services delivered pursuant to a home and community based services waiver, such as those in dispute in this action, there exists the directive that waiver services provided by a relative may be paid for by Medicaid only if the relative meets the qualifications for providers of care and there is adequate justification as to why the relative is the provider of care. State Medicaid Manual, §4442.3

8. Federal law mandates that each state participating in the Medicaid program must designate "a single state agency" responsible for the program in that state. 42 U.S.C. § 1936a(a) (5). The N.C. Department of Health and Human Services operates as this State's single state agency.

9. The N.C. Department of Health and Human Services' rules concerning appeals by Medicaid recipients for the denial, termination or reduction in services (10A N.C.A.C. Subch. 22H) have been promulgated pursuant to the federal provisions of 42 C.F.R. § 431 Subpt. E (200 to 246). These provisions, along with North Carolina's Administrative Procedures Act, entitle Medicaid recipients requesting review of denials of requested Medicaid services to pursue their due process rights through Article 3 of Chapter 150B of the N.C. General Statutes.

10. The CAP/MR/DD Manual (not included in the North Carolina Administrative Code) is a nonbinding interpretative statement from Respondent which defines, interprets, and explains the federal directives, statutes and rules for Medicaid. [See, N.C. Gen. Stat. §150B-(8a)(d)]. Although the Manual sets out the requirements for eligibility for and explanation of Medicaid waiver services, it merely explains and interprets the definitions that currently exist in the binding federal and state statutes, rules, regulations and federal waiver documents.

11. Violations of or failure to comply with the Manual does not have the effect of law, but failure to meet the requirement(s) set out in the federal and state statutes and regulations is/are a ground to deny Medicaid payments. The North Carolina courts have found that such a manual (though indeed authorized in its making) is not an agency rule or regulation, within the meaning of the administrative procedure act, and, although such a manual sets out requirements for Medicaid eligibility, it is an interpretative document, and noncompliance with such a manual is not of effect. *Okale ex rel. Okale v. North Carolina Department of Health and Human Services*, 153 N.C.App. 475, 570 S.E.2d. 741 (2002), *see also, See, Little v. Catawba Mental Health*, 05 DHR 1147.

12. The binding federal waiver documents require that the individual delivering the service of Supported Employment "must meet requirements for a paraprofessional in 10A NCAC 27G .0100-.0200." It was stipulated by the parties that Petitioner's relative, his mother, meets the requirements of a paraprofessional.

13. It was stipulated by the parties that Petitioner is eligible for Supported Employment.

14. The preponderance of the evidence shows that Petitioner is motivated to engage in paid employment and would benefit from the opportunity.

15. The preponderance of the evidence shows that the totality of Petitioner's impairments result in an individual unique in the range of behaviors, limitations of abilities, and the predictive ability for either behaviors or abilities. These factors are complicated by a range of other health issues and lack of skills.

16. The preponderance of the evidence shows that the individuals paid to deliver services, either Home and Community Supports (previously denominated as Supported Living) or respite, to Petitioner turn over at an high rate.

17. The preponderance of the evidence shows that it is difficult to obtain suitable individuals to provide paid services, either Home and Community Supports (previously denominated as Supported Living) or respite, to Petitioner.

18. The preponderance of the evidence shows that Petitioner suffers harm from the loss of staff and the concomitant loss of consistency in the working of his Plan of Care goals.

19. The preponderance of the evidence shows that Petitioner has demonstrated better than average gains in his Plan of Care goals while receiving Home and Community Support services from his relative, his mother.

20. The preponderance of the evidence shows that Petitioner does not suffer detrimental social isolation. The preponderance of the evidence shows that while Petitioner has clear social skills deficits, his social skills were a "relative strength."

21. The preponderance of the evidence shows that there is adequate justification as to why the relative should be the provider of care, specifically that:

- a. Petitioner's unique impairments
- b. make the recruitment and maintenance of paid service staff unduly difficult
- c. with the loss of consistency being harmful to Petitioner thus

- d. justifying the use of family member who presently provides paraprofessional services to Petitioner with positive results.

22. Based upon the above, by the preponderance of the evidence, Petitioner has shown that the April 5, 2005 Plan of Care, as amended by the Plan Update/Revisions dated September 1, September 12, November 1 and December 1, 2005 was appropriate to address Petitioner's needs and preferences. Specifically, that Petitioner's family member, his mother, be the provider of Supported Employment services.

23. Respondent bears the burden of proof by the preponderance of the evidence to provide the legal basis of the denial of Petitioner's request to have his family member be the provider of Supported Employment services. *Little v. Catawba Mental Health*, 05 DHR 1147. The Respondent fails to carry this burden.

DECISION

That Respondent's Decision dated November 9, 2005 to deny the delivery of Supported Employment to Petitioner by his family member as delineated in Petitioner's April 5, 2005 Plan of Care, as amended by the Plan Update/Revisions dated September 1, September 12, November 1 and December 1, 2005 be REVERSED.

NOTICE

The agency making the final decision in this contested case shall adopt the Decision of the Administrative Law Judge unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency is required to give each party an opportunity to file exceptions to this Decision issued by the Undersigned

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

This the 8th day of September, 2006.

JULIAN MANN, III
ADMINISTRATIVE LAW JUDGE

A copy of the foregoing was mailed to:

Curtis B. Venable
Attorney at Law
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ATTORNEY FOR PETITIONER

Diane M. Pomper
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9001 Mail Service Center
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ATTORNEY FOR RESPONDENT

This the _____ day of September, 2006.

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714
(919) 733-2698
FAX: (919) 733-3407

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

**05 EHR 2055
06 EHR 0164**

| | | |
|--|---|--|
| North Carolina Wildlife Federation |) | |
| Central Piedmont Group of the NC Sierra Club |) | |
| Petitioner |) | |
| |) | |
| vs. |) | |
| |) | |
| N. C. Division of Water Quality |) | |
| Respondent |) | |

DECISION

This contested case was heard by Fred G. Morrison Jr., Senior Administrative Law Judge, on July 19 and 20, 2006, in Raleigh, North Carolina. The parties filed proposed Decisions and Memoranda of Law on September 15, 2006.

APPEARANCES

For Petitioners: John Suttles
Amy Pickle
Kay Bond
Southern Environmental Law Center
200 West Franklin Street, Suite 330
Chapel Hill, North Carolina 27516.

For Respondent: Donald W. Laton
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

This matter is an appeal by Petitioners of the National Pollutant Discharge Elimination System (“NPDES”) Phase II stormwater permits issued to three local governments located in the Goose Creek watershed in Mecklenburg and Union Counties. The final NPDES Phase II stormwater permit for Mecklenburg County, including the Town of Mint Hill, was issued on June 15, 2005, with effective dates from July 1, 2005, through June 30, 2010. The final NPDES Phase II stormwater permit for the Town of Indian Trail was issued on September 1, 2005, with effective dates from October 1, 2005, through September 30, 2010. The final NPDES Phase II stormwater permit for the Town of Stallings was issued on September 7, 2005, with effective dates from October 1, 2005, through September 30, 2010.

The parties submitted a Pretrial Order that included their contentions regarding the issues to be decided. The undersigned determines that the issues to be decided are:

1. Whether Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule (hereinafter “err”) in issuing NPDES Permit Nos. NCS000453, NCS000454, and NCS000395 without ensuring the permits will comply with all applicable state water quality standards as required by 40 C.F.R. § 122.44(d) (2006) and N.C. Gen. Stat. § 143.215.1(a)(6)(2006)?
2. Whether Respondent erred in issuing NPDES Permit Nos. NCS000453, NCS000454, and NCS000395 without requiring measures that will reduce discharges of pollutants to the maximum extent practicable as required by 40 C.F.R. § 122.34(a) (2005)?
3. Whether Respondent erred in issuing NPDES Permit Nos. NCS000453, NCS000454, and NCS000395 without including effluent limitations and conditions necessary to meet the requirements of the waste load allocation in the Goose Creek Total Maximum Daily Load as required by 40 C.F.R. § 122.44(d)(1)(vii)(B) (2006)?

WITNESSES

For Petitioners: Thomas Stewart Blue and John Fridell

For Respondent: Michael F. Randall, Kenneth Bruce Pickle, Tilman Bradley Bennett, and Thomas Reeder

EXHIBITS RECEIVED INTO EVIDENCE

Petitioner: Note: Petitioners' exhibits were admitted into evidence without objection as four notebooks containing the documents listed below.

- P-1 O5 EHR 2055 Petitioners' Prehearing Statement (Jan. 6, 2006)
- P-2 06 EHR 0164 Petitioners' Prehearing Statement (Mar. 6, 2006)
- P-3 05 EHR 2055 Respondent's Prehearing Statement (Jan. 6, 2006)
- P-4 06 EHR 0164 Respondent's Prehearing Statement (Mar. 6, 2006)
- P-5 40 C.F.R. § 122.4 (2006)
- P-6 40 C.F.R. § 122.21 (2006)
- P-7 40 C.F.R. § 122.26 (2006)
- P-8 40 C.F.R. § 122.34 (2006)
- P-9 40 C.F.R. § 122.44 (2006)
- P-10 40 C.F.R. § 122.32 (2006)
- P-11 40 C.F.R. § 130.2 (2006)
- P-12 40 C.F.R. § 130.12 (2006)
- P-13 40 C.F.R. § 131.12 (2006)
- P-14 38 Fed. Reg. 13,528 (May 22, 1973)
- P-15 50 Fed. Reg. 1774 (Jan. 11, 1985)
- P-16 52 Fed. Reg. 36,034 (Sept. 25, 1987)
- P-17 58 Fed. Reg. 34,926 (June 30, 1993)
- P-18 64 Fed. Reg. 235 (Dec. 8, 1999)
- P-19 67 Fed. Reg. 127 (July 2, 2002)
- P-20 58 Fed. Reg. 124 (June 30, 1993)
- P-21 33 U.S.C. § 1251 (2006)
- P-22 33 U.S.C. § 1311 (2006)
- P-23 33 U.S.C. § 1313 (2006)
- P-24 33 U.S.C. § 1342 (2006)
- P-25 33 U.S.C. § 1362 (2006)
- P-26 N.C. Gen. Stat. § 143-213 (2006)
- P-27 N.C. Gen. Stat. § 143.215.1 (2006)
- P-28 15A N.C. Admin. Code 2B.0110 (2006)
- P-29 15A N.C. Admin. Code 2B.0201 (2006)
- P-30 15A N.C. Admin. Code 2B.0202 (2006)
- P-31 15A N.C. Admin. Code 2B.0211 (2006)
- P-32 15A N.C. Admin. Code 2H.0112 (2006)
- P-33 Haeuser v. Dept. of Law, Gov.'t of Guam, 97 F.3d 1152 (9th Cir. 1996)
- P-34 Rybachek v. US EPA, 904 F.2d 1276 (9th Cir. 1989)
- P-35 Association of Pacific Fisheries v. US EPA, 615 F.2d 794 (9th Cir. 1980)
- P-36 Environmental Defense Center, Inc. v. US EPA, 319 F.3d 398 (9th Cir. 2001)
- P-37 Arkansas v. Oklahoma, 112 S. Ct. 1046 (1991)
- P-38 Champion International Corporation v. US EPA, 648 F.Supp. 1390 (D.N.C. 1986)
- P-39 NPDES Phase II Stormwater Permit No. NCS000453 for Indian Trail (Sept. 1, 2005)
- P-40 NPDES Phase II Stormwater Permit No. NCS000454 for Stallings (Sept. 7, 2005)
- P-41 NPDES Phase II Stormwater Permit No. NCS000395 for Mecklenburg County, Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville (July 1, 2005)
- P-42 NPDES Phase II Stormwater Permit Application for Indian Trail (Mar. 28, 2003)
- P-43 NPDES Phase II Stormwater Permit Application for Stallings (Mar. 28, 2003)
- P-44 NPDES Phase II Stormwater Permit Application for Mecklenburg County (March 4, 2003), including the attached Stormwater Management Program Report (Feb. 25, 2003)
- P-45 Draft Technical Support Document for Consideration of Federally-listed Threatened or Endangered Aquatic Species in Water Quality Management Planning for the Goose Creek Watershed (July 2005)

- P-46 N.C. Wildlife Resources Commission, Guidance Memorandum to Address and Mitigate Secondary and Cumulative Impacts to Aquatic and Terrestrial Wildlife Resources and Water Quality (Aug. 2002)
- P-47 Total Maximum Daily Loads for Fecal Coliform for Goose Creek, North Carolina, Final Report, April 2005 (Approved July 08, 2005)
- P-48 North Carolina Water Quality Assessment and Impaired Waters List (2002 Integrated 305(b) and 303(d) Report) (Feb. 2003)
- P-49 N.C. Division of Water Quality, Review of Effectiveness of Coastal Stormwater Rules, PowerPoint Presentation (Nov. 2005)
- P-50 N.C. Division of Water Quality, Universal Stormwater Management Program (USMP) Draft Rules, PowerPoint Presentation (Oct. 12, 2005)
- P-51 Letter from P. Benjamin and B. Cole, U.S. Fish and Wildlife Service, to B. Bennett, NC Division of Water Quality (Dec. 29, 2004)
- P-52 R.A. Fischer, C.O. Martin, and J.C. Fischenich, Improving riparian buffer strips and corridors for water quality and wildlife, in PROCEEDINGS OF THE AMERICAN WATER RESOURCES ASSOCIATION INTERNATIONAL CONFERENCE ON RIPARIAN ECOLOGY AND MANAGEMENT IN MULTI-LAND USE WATERSHEDS, 457-462, American Water Resources Association, Portland, Oregon (2000).
- P-53 D.L. Correll., Buffer zones and water quality protection: general principles, in PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON BUFFER ZONES, Quest Environmental, Harpenden, Hertfordshire, UK (1997).
- P-54 R.A. Fischer, C. O. Martin, D. Q. Barry, K. Hoffman, K. L. Dickson, E. G. Zimmerman, and D.A. Elrod, Corridors and Vegetated Buffer Zones: A Preliminary Assessment and Study Design, Technical Report EL-99-3. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS (1999).
- P-55 A.H. Todd, Making decisions about riparian buffer width, in PROCEEDINGS OF THE AMERICAN WATER RESOURCES ASSOCIATION INTERNATIONAL CONFERENCE ON RIPARIAN ECOLOGY AND MANAGEMENT IN MULTI-LAND USE WATERSHEDS, 445-450 American Water Resources Association, Portland, Oregon (2000).
- P-56 C.W. May, & R.R. Horner, The cumulative impacts of watershed urbanization on stream-riparian ecosystems, in PROCEEDINGS OF THE AMERICAN WATER RESOURCES ASSOCIATION INTERNATIONAL CONFERENCE ON RIPARIAN ECOLOGY AND MANAGEMENT IN MULTI-LAND USE WATERSHEDS, American Water Resources Association, Portland, Oregon (2000).
- P-57 R.J. Naiman, H. Decamps, & M. Pollock., The role of riparian corridors in maintaining regional biodiversity, 3 ECOLOGICAL APPLICATIONS 209, 209-212 (1993).
- P-58 G.J. Kauffman, & T. Brant, The role of impervious cover as a watershed-based zoning tool to protect water quality in the Christina River Basin of Delaware, Pennsylvania, and Maryland, Paper presented at Watershed 2000 Management Conference, Water Environment Federation, Alexandria, Virginia (2000).
- P-59 C.L. Arnold, Jr., & J.C. Gibbons, Impervious surface coverage: the emergence of a key environmental indicator, 62 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 243, 243-258 (1996).
- P-60 B.A. Doll, et. al., Hydraulic geometry relationships for urban streams throughout the piedmont of North Carolina, 38 JOURNAL OF THE AMERICAN WATER RESOURCES ASSOCIATION 641, 641-651 (2002).
- P-61 A.J. Castelle, A.W. Johnson, & C. Conolly, Wetland and stream buffer size requirements: a review, 23 JOURNAL OF ENVIRONMENTAL QUALITY 878, 878-882 (1994).
- P-62 A.E.H. Livingston, J.R. Maxted, R.R. Horner, & C.W. May, BMPs, impervious cover, and biological integrity of small streams (on file with the author) (1999).
- P-63 Tom Schueler, The importance of imperviousness, 1 WATERSHED PROTECTION TECHNIQUES 100, 100-111 (1994).
- P-64 Belinda Hatt, et. al., The Influence of Urban Density and Drainage Structure on the Concentrations and Loads of Pollutants in Small Streams, 34 ENVIRONMENTAL MANAGEMENT 1, 112-124 (2004).
- P-65 Sarah Gergel, et. al., Landscape indicators of human impact to riverine systems, AQUATIC SCIENCES 64, 118-28 (2002).
- P-66 Chandler Morse, et. al., Impervious Surface Area as a Predictor of the Effects of Urbanization on Stream Insect Communities in Maine, U.S.A., ENVIRONMENTAL MONITORING AND ASSESSMENT 89, 95-127 (2003).
- P-67 Lizhu Wang, et. al., Impacts of Urbanization on Stream Habitat and Fish Across Multiple Spatial Scales, 28 ENVIRONMENTAL MANAGEMENT 2, 255-66 (2001).
- P-68 Joong Lee & James Heaney, Estimation of Urban Imperviousness and its Impacts on Stormwater Systems, 129 JOURNAL OF WATER RESOURCES PLANNING AND MANAGEMENT 5, 419 (2003).
- P-69 Seth Rose & Norman Peters, Effects of Urbanization on streamflow in the Atlanta Area (Georgia, U.S.A.), HYDROLOGICAL PROCESSES 15, 1441-57 (2001).
- P-70 Derek B. Booth, et. al., Reviving Urban Streams: Land Use, Hydrology, Biology, and Human Behavior, JOURNAL OF THE AMERICAN WATER RESOURCES ASSOCIATION (2004).

- P-71 U.S. Environmental Protection Agency, Annotated Bibliography of Urban Wet Weather Flow Literature from 1996-2000.
- P-72 Deposition of Thomas Reeder (July 7, 2006)
- P-73 Deposition of Michael Randall (July 6, 2006)
- P-74 Deposition of Kenneth Pickle (June 30, 2006)
- P-75 Deposition of Bradley Bennett (June 30, 2006)

Respondent:

- R-1 NPDES Permit No. NCS000395 for Mecklenburg County, Town of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville (July 1, 2005)
- R-2 NPDES Permit No. NCS000453 for Town of Indian Trail (Sept. 1, 2005)
- R-3 NPDES Permit No. NCS000454 for Town of Stallings (Sept. 1, 2005)
- R-4 July 2005 Review Draft Goose Creek Technical Support Document
- R-5 Wildlife Resources Commission, Guidance Memorandum to Address and Mitigate Secondary and Cumulative Impacts to Aquatic and Terrestrial Wildlife Resources and Water Quality (Aug. 2002).
- R-6 Total Maximum Daily Loads for Fecal Coliform for Goose Creek Final Report (Apr. 2004)
- R-7 Response to Comments Summary, North Carolina MS4, Phase II Individual Permits
- R-8 N.C. Admin. Code 02B Rules

STATUTES AND RULES IN ISSUE

- 33 U.S.C. § 1251 (2006)
- 33 U.S.C. § 1311 (2006)
- 33 U.S.C. § 1342 (2006)
- 33 U.S.C. § 1362 (2006)
- 40 C.F.R. § 122.21 (2006)
- 40 C.F.R. § 122.32 (2006)
- 40 C.F.R. § 122.34 (2006)
- 40 C.F.R. § 122.44 (2006)
- 40 C.F.R. § 130.2 (2006)
- 40 C.F.R. § 131.12 (2006)
- N.C. Gen. Stat. 143-213 (2006)
- N.C. Gen. Stat. 143-215.1 (2006)
- N.C. Admin. Code 02B.0110 (2005)
- N.C. Admin. Code 02B.0200 (2005)
- N.C. Admin. Code 02B.0201 (2005)
- N.C. Admin. Code 02B.0211 (2005)
- N.C. Admin. Code 02H.0112 (2005)

MOTIONS

On March 10, 2006, Petitioners and Respondent filed a Joint Motion to Consolidate Cases, Continue Hearing, and Amend Scheduling Order and Deadlines in 05 EHR 2055 and 06 EHR 0164. The two cases collectively involved Petitioners' appeals of three NPDES Phase II stormwater permits in the Goose Creek watershed. On March 23, 2006, Chief Administrative Law Judge Julian Mann granted the motion to consolidate and reassigned the cases to Senior Administrative Law Judge Fred G. Morrison Jr.

On June 1, 2006, Respondent filed a Motion to Join Additional Parties. Respondent requested that the County of Mecklenburg, North Carolina, and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Pineville, North Carolina; Indian Trail, North Carolina; and Stallings, North Carolina, be joined as necessary parties or, in the alternative, as permissive parties. In response, Petitioners opposed the motion and contended that the additional parties were not necessary parties. Petitioners also contended that the parties should not be joined as permissive parties because it would cause undue delay and prejudice to Petitioners. Of the proposed parties to be joined, only Mecklenburg County and the Town of Mint Hill filed a response. Both parties opposed the motion to be joined as additional parties to the litigation. Oral argument was held via teleconference on June 9, 2006. The undersigned denied the motion after considering written memos supporting and opposing the motion and at the conclusion of oral argument on July 5, 2006.

On June 30, Petitioners filed a Motion for Summary Judgment on Aggrieved Party Status. Following oral argument and prior to a ruling from the Court, Respondent agreed to stipulate to Petitioners' aggrieved party status in the Pretrial Order. Therefore, the undersigned did not rule on this motion.

Pursuant to N.C. Gen. Stat. § 150B-34 and -36, the ruling on the Motion to Join Additional Parties is a part of this Decision. All such rulings are hereby incorporated herein.

STIPULATIONS

In the Pretrial Order, the parties agreed to and the undersigned approved the following stipulations:

Procedural Stipulations from Pretrial Order:

1. North Carolina Wildlife Federation and Central Piedmont Group of the NC Sierra Club ("Petitioners") are entitled to bring these consolidated contested cases as "person[s] aggrieved" within the meaning of N.C. Gen. Stat. §§ 150B-2(6) and 23 (2006).

2. Petitioners timely filed Petitions for Contested Case Hearings to challenge three Phase II Stormwater Permits identified as NPDES Permit No. NCS000453 issued to the Town of Stallings, NPDES Permit No. NCS000454 issued to the Town of Indian Trail, and NPDES Permit No. NCS000395 issued to Mecklenburg County.

3. Petitioners have the burden of proof to establish facts that Respondent has erred in one or more of the ways set forth in N.C. Gen. Stat. §150B-23(a).

4. Presentation of Evidence:

(a) Petitioners shall present evidence first to show that the three stormwater permits do not "reasonably ensure compliance with applicable water quality standards and regulations of all affected states." N.C. Admin. Code tit. 15A, r. 02H.0112(c) (2006).

(b) If necessary, Respondent may then present evidence to show that the three stormwater permits at issue "reasonably ensure compliance with applicable water quality standards and regulations of all affected states."

5. Each of the Exhibits identified above is an authentic copy of the original, is a public record or a business or agency record kept in the ordinary course of business, and may be introduced into evidence without further identification of proof, all subject to objections for relevance.

Factual Stipulations from Pretrial Order:

1. The federal Clean Water Act requires certain governmental entities to control stormwater pollution into public waters. 33 U.S.C. § 1342(p)(2) (2005).

2. These governmental entities are required to obtain National Pollutant Discharge Elimination System ("NPDES") permits to eliminate or reduce to the maximum extent practicable discharges of pollution from stormwater.

3. The permitting program for stormwater discharges has been implemented in two phases. In Phase II, certain municipalities designated as "urbanizing" that serve less than 100,000 are required to obtain NPDES Phase II stormwater permits.

4. To meet federal Clean Water Act and state law requirements, the Towns of Indian Trail and Stallings, and Mecklenburg County, including the town of Mint Hill, were required to obtain Phase II stormwater discharge permits.

5. The federal regulations governing Phase II require owners and operators of municipal storm sewer systems ("MS4s") to apply for NPDES permits which require the implementation of six minimum measures within their stormwater systems to control pollution. 40 C.F.R. § 122.21(a) (2005). The six minimum measures consist of: (1) public education and outreach on stormwater impacts; (2) public involvement and participation in program design; (3) illicit discharge detection and elimination; (4) construction site stormwater pollution control; (5) post-construction stormwater management; and (6) pollution prevention and good housekeeping measures. 40 C.F.R. § 122.34(b) (2005).

6. Respondent issued a final NPDES Phase II stormwater permit to Mecklenburg County, including the Town of Mint Hill, on June 15, 2005, with effective dates from July 1, 2005, through June 30, 2010.

7. Respondent issued a final NPDES Phase II stormwater permit to the Town of Indian Trail on September 1, 2005, with effective dates from October 1, 2005, through September 30, 2010.

8. Respondent issued a final NPDES Phase II stormwater permit to the Town of Stallings on September 7, 2005, with effective dates from October 1, 2005, through September 30, 2010.

9. Goose Creek is a perennial stream fed by a number of perennial, intermittent and ephemeral tributaries. Goose Creek is a tributary to the Rocky River, which is in turn a tributary to the Pee Dee River (the lower portion of the Yadkin River). The Goose Creek watershed is located in southeastern Mecklenburg County and northwestern Union County, North Carolina. Portions of the Towns of Indian Trail, Stallings, and Mint Hill drain into the Goose Creek watershed.

10. The Carolina heelsplitter is a species of freshwater mussel. The U.S. Fish & Wildlife Service (“USFWS”) listed the Carolina heelsplitter as endangered pursuant to the provisions of the Endangered Species Act on June 30, 1993. 58 Fed. Reg. 34,926 (June 30, 1993).

11. The Goose Creek watershed contains one of only seven remaining populations of the Carolina heelsplitter. In July 2002, the USFWS designated critical habitat for the Carolina heelsplitter, including portions of the main stems of Goose Creek and Duck Creek in Union County. 67 Fed. Reg. 44,502-44,521 (July 2, 2002) Since the USFWS listed the Carolina heelsplitter as endangered, it has discovered two additional populations, raising the total to nine.

12. Goose Creek has its headwaters in southeastern Mecklenburg County within the jurisdiction of the Town of Mint Hill. Stormwater runoff from Mint Hill flows into Goose Creek at its headwaters and travels downstream into the critical habitat for the Carolina heelsplitter. Stormwater runoff from Indian Trail and Stallings flows into Goose Creek and travels downstream into the critical habitat for the Carolina heelsplitter.

13. The North Carolina Wildlife Resources Commission (“WRC”) and the USFWS have jointly submitted to Respondent a draft technical support document containing their recommendations for a site-specific management plan to protect and preserve habitat for threatened or endangered species in Goose Creek.

14. The WRC, in coordination with the USFWS, also has issued guidance regarding water quality conditions required to sustain and recover federally listed endangered species, including the Carolina heelsplitter.

15. The NPDES Phase II stormwater permits Respondent issued to the Towns of Indian Trail and Stallings and Mecklenburg County, set the imperviousness threshold at twenty-four percent and require thirty-foot buffers on perennial and intermittent streams in the Goose Creek watershed.

16. Under the NPDES Phase II stormwater permits Respondent issued to the Towns of Indian Trail and Stallings and Mecklenburg County, developments with a built upon area less than twenty-four percent are not required to implement engineered stormwater management controls to treat stormwater pollution.

17. Goose Creek does not meet water quality standards for fecal coliform. In 1998, Respondent placed Goose Creek on the 303(d) list of impaired waters due to fecal coliform violations. According to Respondent’s listing document, the causes of water quality impairment in Goose Creek include construction activities and urban runoff/storm sewers. Goose Creek remains on the 303(d) list of impaired waters through the present.

18. On April 20, 2005, Respondent finalized and submitted to the U.S. EPA Total Maximum Daily Loads (“TMDL”) for Fecal Coliform for Goose Creek. The TMDL allocates allowable pollutant loads from known sources so that required actions may be taken to restore the water to its intended uses.

19. The U.S. EPA approved and finalized the Goose Creek TMDL without substantial change on July 8, 2005.

20. The waste load allocation in the Goose Creek TMDL requires a ninety-two point five percent reduction of fecal coliform discharges from existing MS4s. EPA approved and finalized the Goose Creek TMDL without substantial change on July 8, 2005.

21. The Goose Creek TMDL specifically requires a ninety-two point five percent reduction of fecal coliform discharges from the MS4s in Indian Trail, Stallings, and Mint Hill, in order to meet water quality standards.

22. Petitioners voluntarily agree to dismiss as a non-suit and without prejudice claims brought under Section 9 of the Endangered Species Act in these consolidated cases.

23. Each of the Exhibits identified above is an authentic copy of the original, is a public record or a business or agency record kept in the ordinary course of business, and may be introduced into evidence without further identification of proof, all subject to objections for relevance.

FINDINGS OF FACT

1. Petitioner Central Piedmont Group of the North Carolina Sierra Club is a non-profit organization. Central Piedmont Group is the local Sierra Club member group in Mecklenburg County. Central Piedmont Group members use, enjoy, and benefit aesthetically and recreationally from the Goose Creek watershed. Central Piedmont Group also has members who live within the Goose Creek watershed.

2. Petitioner North Carolina Wildlife Federation is a not-for-profit corporation founded in 1945. NCWF, which is an affiliate of the National Wildlife Federation (“NWF”), has 17,000 members in North Carolina. NWF has approximately 5 million members, including 25,000 members in North Carolina. NCWF has members who use, enjoy, and benefit aesthetically and recreationally from the Goose Creek watershed. NCWF also has members who live within the Goose Creek watershed.

3. Respondent North Carolina Department of Environment and Natural Resources (“NCDENR”) Division of Water Quality (“DWQ”) is the state agency charged with protecting water quality and has been delegated the authority to issue NPDES permits under the Clean Water Act.

4. Petitioners’ witness, Thomas Stewart Blue, is an expert in the field of stormwater engineering and hydrology with a particular expertise in engineered stormwater controls, impervious surface limits, land development, and water quality modeling related to developing Total Maximum Daily Loads (“TMDL”).

5. Petitioners’ witness, John Fridell, a wildlife biologist with the United States Fish and Wildlife Service (“USFWS”), is an expert in wildlife biology with a particular expertise in the protection and recovery of the federally endangered Carolina heelsplitter.

6. Respondent’s witness, Michael F. Randall, is an environmental engineer with the Division of Water Quality’s Stormwater Permitting Unit. Mr. Randall was involved in discussions regarding the development of the three challenged NPDES permits, but was not in charge of drafting any of them.

7. Respondent’s witness, Kenneth Bruce Pickle, is an environmental engineer with the Division of Water Quality’s Stormwater Permitting Unit. Mr. Pickle was involved in drafting and noticing the NPDES Phase II stormwater permits for the Town of Indian Trail and the Town of Stallings.

8. Respondent’s witness, Tilman Bradley Bennett, is the supervisor of the Division of Water Quality’s Stormwater Permitting Unit. Mr. Bennett’s responsibilities include oversight for all of the state’s stormwater permitting programs, including the NPDES Phase II program.

9. Respondent’s witness, Thomas Reeder, is the manager of the Division of Water Quality’s Wetlands and Stormwater Branch. Mr. Reeder’s responsibilities include oversight of any programs that are associated with wetlands and stormwater management in the state.

10. None of Respondent’s witnesses were offered as experts or qualified as experts in the field of stormwater management or wildlife biology.

11. Water quality degradation occurs when alterations are made to the natural character of the watershed. The natural character of a watershed includes its physical integrity, such as the way in which water travels downstream and the amount of groundwater recharging the stream’s base flow; its biological integrity, such as the biological diversity of organisms living in the streams; and its chemical integrity, such as the distribution of chemicals in the water. A system is considered degraded when one of

these characteristics is altered by non-natural activities. For example, a stream may no longer be able to support the natural biological diversity in the stream.

12. Land development is one type of non-natural activity that causes water quality degradation. In particular, increased stormwater runoff arising from construction and post-construction land development activities causes significant water quality degradation and aquatic habitat loss, resulting in lowered biological integrity for aquatic systems.

13. Stormwater runoff occurs when impervious surfaces increase within a watershed and rainfall can no longer infiltrate into soils. Surfaces that water cannot effectively pass through, such as asphalt, concrete, roof shingles, metal, gravel, and compacted soils.

14. Impervious surfaces collect pollutants, such as nutrients, sediment, petroleum products, and fecal coliform, deposited from other sources. During storm events, these collected pollutants are washed into aquatic systems as stormwater runoff.

15. Numerous scientific studies have shown that increased impervious surface in a watershed is correlated with water quality degradation. These studies have documented significant water quality degradation in streams draining watersheds with impervious surface area from zero to thirteen percent. One such study found that there is no safe threshold for impervious surface area because any increase in impervious surface results in detrimental impacts to sensitive aquatic species.

16. Increased stormwater runoff from impervious surfaces also causes increased runoff volume which detrimentally affects channel stability in aquatic systems. Stream channels will either widen their stream banks, down cut the stream bed, or do both to accommodate larger and more severe runoff events. The sediment from the eroded stream banks and bed will increase sediment loading in the stream.

17. Because increased impervious surfaces reduce the amount of natural infiltration in a watershed, groundwater recharge is also reduced. Groundwater contributes to a stream's base flow, which is the portion of water that comes from sources other than surface runoff. Thus, when groundwater recharge is reduced, base flow in streams is also reduced.

18. The NPDES Phase II stormwater permits at issue in these proceedings are intended to regulate new discharges of stormwater pollution from urban land development and to ameliorate the effects of stormwater pollution. Each permit contains six minimum measures consisting of: (1) public education; (2) public involvement in designing program; (3) illicit discharge detection and elimination; (4) construction site stormwater pollution control; (5) post-construction stormwater management; and (6) pollution prevention.

19. The NPDES Phase II stormwater permits at issue in these proceedings establish model practices for post-construction stormwater controls that constitute the minimum measures that must be implemented under the NPDES Phase II program. These model practices include a low-density option and a high-density option for stormwater controls in new development.

20. The low-density option applies to any new development that involves up to, but no more than, twenty-four percent impervious surface area or "built-upon area." Under this option, the only post-construction stormwater management measures are vegetated conveyances for transporting stormwater to the nearest stream and a thirty-foot setback from the stream for all impervious surfaces.

21. The high-density option applies to any new development that involves more than twenty-four percent impervious surface area. Under this option, the stormwater measures require a thirty-foot setback from the stream for all impervious surfaces and require the installation of engineered structural controls. The structural controls must treat the difference between the pre- and post-development runoff for a certain design storm and remove eighty-five percent of all total suspended solids ("TSS"). The design storm included in the model practices is the one year, twenty-four hour storm.

22. All three of the challenged NPDES Phase II stormwater permits incorporate these model practices as the post-construction measures included in the permits themselves. These three NPDES Phase II stormwater permits authorize discharges of stormwater pollution into the Goose Creek watershed from the following sources: (1) Mecklenburg County, specifically as it includes discharges from the Town of Mint Hill; (2) the Town of Indian Trail; and (3) the Town of Stallings.

23. Goose Creek is a perennial stream with its watershed located in southeastern Mecklenburg County and northwestern Union County, North Carolina. Goose Creek has its headwaters in southeastern Mecklenburg County within the jurisdiction of the Town of Mint Hill. Stormwater runoff from portions of the Towns of Indian Trail, Stallings, and Mint Hill drains into Goose Creek. Duck Creek is the other main tributary in the Goose Creek watershed and is a perennial stream.

24. Goose Creek depends on base flow, particularly during dry or drought periods. Without adequate base flow, streams in the Goose Creek watershed will not be able to maintain adequate flows during dry or drought periods and will become an intermittent stream.

25. Stormwater runoff from Mint Hill flows into Goose Creek at its headwaters and travels downstream into the critical habitat for the Carolina heelsplitter. Stormwater runoff from Indian Trail and Stallings flows into Goose Creek and travels downstream into the critical habitat for the Carolina heelsplitter.

26. The Carolina heelsplitter is a species of mussel and was federally listed by the USFWS as endangered pursuant to the provisions of the Endangered Species Act on June 30, 1993. The Goose Creek watershed contains one of only nine remaining populations of the Carolina heelsplitter mussel.

27. Urban land development is the most significant land use change in the Goose Creek watershed.

28. As urban development and impervious cover increases in the Goose Creek watershed, the upper reaches of Goose and Duck Creeks have experienced significant stream bank and stream bed erosion due to increased stormwater runoff.

29. Increased urban development has also caused base flow in Goose and Duck Creeks to decline. The USFWS has seen portions of Duck Creek completely dry up during dry periods due to low groundwater recharge levels.

30. Increased urban development has also caused the levels of several pollutants associated with stormwater to increase in the Goose Creek watershed. These pollutants include fecal coliform, ammonia, phosphorus, nitrate-nitrite, copper, and sediment. Although a TMDL has been developed to deal with fecal coliform issues, water quality standards are not in place for ammonia, phosphorus, nitrate-nitrite, copper, or sediment in the Goose Creek watershed.

31. As stated above, all three permits include the minimum model practices as the post-construction measures specified within the permits. Respondent issued the three NPDES Phase II stormwater permits with an imperviousness threshold for structural stormwater controls at twenty-four percent and a thirty-foot setback on perennial and intermittent streams in the Goose Creek watershed. For developments at or below twenty-four percent imperviousness, the only requirement beyond the thirty-foot setback is the use of vegetated conveyances. For developments above twenty-four percent imperviousness, the required measures include structural stormwater controls to treat the difference in pre- and post-development runoff for the one year, twenty-four hour storm and the controls must be designed to remove at least eighty-five percent TSS.

32. It is undisputed that water quality is degraded at impervious surface levels ranging between six to thirteen percent. It is also undisputed that there are many pollutant constituents in stormwater runoff beyond TSS. Those pollutants include nutrients, fecal coliform, pesticides, and petroleum products.

33. Because the permits do not adequately regulate impervious surfaces and pollutant constituents in stormwater runoff, the permits as drafted will not protect the biological integrity of the Goose Creek watershed and will result in water quality degradation.

34. Furthermore, it is undisputed that protection of biological integrity also requires the protection of the most sensitive species in a stream. It is also undisputed that protecting the biological integrity in the Goose Creek watershed includes protecting the Carolina heelsplitter.

35. The historic range of the federally endangered Carolina heelsplitter included wide portions of the Catawba, Pee Dee, Savannah, and Saluda river basins.

36. The current range of the Carolina heelsplitter is limited to nine surviving populations in the Catawba, Pee Dee, and Savannah river basins. One of the populations is found in the Goose Creek watershed.

37. Because the federally endangered Carolina heelsplitter is found in so few places today, the USFWS has determined that "any factors that adversely modify habitat or water quality in the stream reaches it now inhabits could further endanger the species."

38. The USFWS also has determined that "channel and streambank scouring associated with increased storm-water runoff; and the run-off of silt, fertilizers, pesticides, and other pollutants from various land disturbance activities with inadequate or poorly maintained erosion and stormwater control" are among the factors that adversely modify Carolina heelsplitter habitat.

39. The USFWS has documented a correlation between increased urban development and Carolina heelsplitter habitat degradation in the Goose Creek watershed. As urban development has increased in the upper portion of the watershed, Carolina heelsplitter habitat is being eliminated. Surveys conducted by the USFWS of Carolina heelsplitter habitat from the time of listing through 2005 show that habitat has steadily decreased as urban development has increased in the watershed.

40. The federally endangered Carolina heelsplitter lives in the gravelly, rocky substrate found along the stream bed in Goose and Duck Creeks in the Goose Creek watershed. The majority of the substrate in the upper reaches of both creeks has been eroded away by increased stormwater runoff, thereby significantly reducing the available habitat for the endangered mussel.

41. Pollutants, such as sediment, ammonia, phosphorus, nitrate-nitrite, and copper, found in stormwater runoff have been determined to be harmful to the Carolina heelsplitter.

42. Sediment from stormwater runoff affects the Carolina heelsplitter in four ways. First, because the mussels are filter feeders, the increased sediment loading in stormwater runoff can clog their gills affecting their respiration and feeding. Increased sediment in the streams can ultimately suffocate the mussels by accumulating on top of the mussels' habitat and burying the mussels. Second, sediment affects the stability of the stream bottom and can result in mussels being washed out of their habitat because the substrate becomes unstable. Third, other pollutants bind to sediment particles and get carried down into the substrate as the sediment settles out of the water column, thereby increasing the mussels' exposure to the pollutant. Finally, sediment detrimentally affects the health of fish in streams. The mussels rely upon a fish host in order to reproduce by having mussel larvae attach to the fish's gill to mature.

43. Ammonia is a pollutant that has been associated with stormwater runoff and is of particular concern with regard to mussels. Ammonia is extremely toxic to freshwater mussels. Ammonia levels in the Goose Creek watershed have been identified as already exceeding the levels of concern for mussels and monitoring indicates that the levels are on an increasing trend in the watershed.

44. Phosphorus and nitrate-nitrite are also associated with stormwater runoff. Both pollutants are nutrients and at excessive levels in a watershed can lead to algal blooms, which deplete the oxygen levels in the streams. Low oxygen levels detrimentally affect the Carolina heelsplitter. Algal blooms from excessive nutrient levels have been documented in the Goose Creek watershed. Monitoring in the watershed also indicates that phosphorus and nitrate-nitrite levels in the watershed are on an increasing trend.

45. Copper is also a constituent in stormwater runoff and has been found harmful to mussels at high concentrations. Copper levels exceeding the concern level for mussels have been documented in the Goose Creek watershed.

46. The USFWS, in conjunction with the N.C. Wildlife Resources Commission and the N.C. Natural Heritage Program, has identified measures for controlling stormwater runoff and mitigating its detrimental impacts to the Carolina heelsplitter and its habitat in the Goose Creek watershed.

47. The USFWS provided Respondent with its determinations prior to the issuance of the three NPDES Phase II permits challenged in this proceeding, in the form of a letter and a draft site specific management plan.

48. Based on a review of scientific literature regarding appropriate buffer widths and on the field observations of the USFWS's own experts, the USFWS determined that two-hundred foot undisturbed riparian buffers on perennial streams and one-hundred foot undisturbed riparian buffers on intermittent streams are required to protect the Carolina heelsplitter in Goose Creek.

49. Based on a review of scientific literature regarding impervious surface or disturbance in the floodplain, and on the field observations of the USFWS's own experts, the USFWS determined that impervious surface, active management, and other land disturbances, such as sewer lines and water lines, should be prohibited in the Goose Creek floodplain.

50. Based on a review of scientific literature regarding impervious surface thresholds and on the field observations of the USFWS's own experts, the USFWS determined that any further increases in impervious surface in the Goose Creek watershed should be required to implement engineered stormwater controls to offset impacts to the stream.

51. Based on a review of scientific literature regarding impervious surface thresholds and on the field observations of the USFWS's own experts, the USFWS determined that water quality standards for phosphorus, nitrate-nitrite, copper, and ammonia should be in place in the Goose Creek watershed to protect the Carolina heelsplitter from toxic levels of these pollutants. For ammonia, the USFWS has determined that an acute water quality standard of 1.75 milligrams per liter and a chronic water quality standard of 0.50 milligrams per liter are necessary to protect the Carolina heelsplitter in the Goose Creek watershed. The USFWS has

determined that a phosphorus water quality standard of 0.1 milligrams per liter and a nitrate-nitrite water quality standard of 0.4 milligrams per liter are necessary to protect the Carolina heelsplitter in the Goose Creek watershed. For copper, the USFWS has determined that an acute water quality standard of 3.6 micrograms per liter and a chronic water quality standard of 2.2 micrograms per liter are necessary to protect the Carolina heelsplitter in the Goose Creek watershed. Acute water quality standards constitute the level of a particular pollutant that can be tolerated for a short period of time. Chronic water quality standards constitute the level of a particular pollutant that can be tolerated repeatedly over time.

52. In issuing the three challenged NPDES Phase II permits, Respondent did not include the determinations made by the USFWS and did not include adequate protections for the federally endangered Carolina heelsplitter.

53. If development is allowed in the Goose Creek watershed pursuant to post-construction conditions and limitations in these three permits, the Carolina heelsplitter population in Goose Creek will be extirpated in two to five years.

54. As noted above and not disputed by any of Respondent's witnesses, stormwater pollution causes water quality degradation by increasing the volume of water entering an aquatic system, decreasing groundwater recharge and base flow, increasing pollutant loadings to streams, and detrimentally impacting biological communities within the aquatic system.

55. As stated above, under the low-density development option, the permits allow development up to and including twenty-four percent impervious surface without any stormwater management measures other than a vegetated conveyance and a thirty-foot setback. Scientific studies documenting the correlation between increases in impervious surface area and decreases in water quality have shown that impervious surface areas between six and thirteen percent result in significant water quality degradation. Thus, the low-density option in the three challenged NPDES permits will also result in further water quality degradation in the Goose Creek watershed.

56. The permits state that vegetated conveyances must be used to the maximum extent practicable, but do not include any design requirements and are not required to be constructed as to remove any of the major pollutant constituents of stormwater (e.g., sediment, nutrients, fecal coliform, heavy metals, and pesticides).

57. Vegetated conveyances have been shown to cause a net increase in pollutant loading in streams from stormwater runoff. The grassed areas become an attractant for water fowl and other wildlife, which then defecate in the conveyances causing a net increase in fecal coliform, ammonia, and nitrogen loading.

58. Under the high-density development option (for development above twenty-four percent impervious surface), the permits require that new developments include stormwater structural controls designed to treat the difference in the pre- and post-development runoff for the one year, twenty-four hour storm event and remove eighty-five percent of total suspended solids.

59. TSS are particles of soil or sediment suspended in the water column. TSS have a variety of effects on water quality. TSS can transport into streams other pollutants that attach to the solids. When it settles out of the water column, TSS can settle out to the bottom of the stream affecting the stability of the stream bed. TSS also affects the health of fish and can impair the biological integrity of an aquatic system.

60. Although the structural controls are required to be designed to remove eighty-five percent TSS, the permits do not have any requirements to ensure that the structural controls actually continue to perform at an eighty-five percent removal rate during the terms.

61. The permits require that the structural controls be designed to treat the difference in pre-and post-development runoff for the one year, twenty-four hour storm event. In Goose Creek, the one year, twenty-four hour storm event is a rainfall event with about 2.9 inches of rain.

62. The structural controls will not be able to remove eighty-five percent TSS in storm events larger than the one year, twenty-four hour storm event.

63. The one year, twenty-four hour storm event as a design standard is not sufficient to protect water quality in Goose Creek from degradation because it does not take into account antecedent conditions on a site, such as saturated soils from previous storm events.

64. The permits do not contain any volumetric requirements to protect channel stability, maintain base flow, or groundwater recharge for low-density or high-density development. Under the permits, the volume of stormwater during storm events will increase in the Goose Creek watershed and base flow to the watershed will be significantly reduced.

65. The three challenged NPDES stormwater permits do not have specific requirements directing how a structural control is to reduce the discharge of stormwater pollutants to the maximum extent practicable.

66. The three challenged NPDES Phase II stormwater permits do not require specific stormwater control measures to be in place for a particular development.

67. Rather than include specific requirements, the permits require the permittees to develop a stormwater management plan at some point in the future to reduce the discharge of pollutants to the maximum extent practicable.

68. The stormwater management plan is to contain more specific terms and provisions for controlling pollutants and can include additional measures to treat stormwater runoff. The terms include "effluent limitations" in the form of best management practices.

69. Although Respondent contends that the stormwater management plans are enforceable parts of the NPDES Phase II permits, the stormwater management plans are not attached or annexed to the NPDES Phase II stormwater permits.

70. Respondent did not include the stormwater management plans in the public notices for the draft permits.

71. When members of the public requested copies of the draft permits to comment upon, Respondent provided only the draft permit and not the stormwater management plan.

72. Goose Creek does not meet water quality standards for fecal coliform. In 1998, Respondent placed Goose Creek on the 303(d) list of impaired waters due to fecal coliform violations. According to Respondent's listing document, the causes of water quality impairment in Goose Creek include construction activities and urban runoff/storm sewers. Goose Creek remains on the 303(d) list of impaired waters through the present.

73. Respondent submitted the Total Maximum Daily Loads ("TMDL") for Fecal Coliform for Goose Creek to the U.S. Environmental Protection Agency ("EPA") for final approval on April 20, 2005. The TMDL allocates allowable fecal coliform loads from known sources so that remedial measures may be implemented to remove the water quality impairment.

74. The EPA approved and finalized the Goose Creek TMDL without substantial change on July 8, 2005.

75. The finalized waste load allocation in the Goose Creek TMDL requires a ninety-two point five percent (92.5%) reduction of current fecal coliform discharges from existing municipal separate storm sewer systems

76. Indian Trail, Stallings, and Mecklenburg County own and operate MS4s in the Goose Creek watershed.

77. The Goose Creek TMDL specifically requires a ninety-two point five percent (92.5%) reduction of current fecal coliform discharges from Indian Trail, Stallings, and the portions of Mecklenburg County within the Goose Creek watershed, in order to meet water quality standards.

78. The three NPDES Phase II stormwater permits for Indian Trail, Stallings, and Mecklenburg County, do not contain terms and conditions that would require reductions from current loadings of fecal coliform from stormwater runoff.

79. If development continues in the Goose Creek watershed as permitted under these three NPDES Phase II stormwater permits, fecal coliform loading will increase.

BASED UPON the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C. Gen. Stat. § 150B-23 (2006).

2. Petitioners are persons aggrieved by the issuance of these three NPDES Phase II permits within the meaning of the Administrative Procedure Act.

3. All parties have been correctly designated and are properly before the Office of Administrative Hearings. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.

4. Petitioners bear the burden of proof on the issues.

5. Pursuant to the federal Clean Water Act, certain governmental entities are required to obtain NPDES Phase II stormwater permits to reduce and control stormwater pollution into public waters. 33 U.S.C. § 1342 (p)(2) (2006). In particular, with regard to the issues in this case, Mecklenburg County and the Towns of Mint Hill, Indian Trail, and Stallings are required to obtain NPDES Phase II stormwater permits for discharges of stormwater pollution from new development. 40 C.F.R. § 122.32 (2006).

Contested Issue No. 1:

6. Pursuant to 40 C.F.R. § 122.44(d) (2006) and N.C. Gen. Stat. § 143.215.1(a)(6) (2006), Respondent was responsible for ensuring that the NPDES Phase II permits for Indian Trail, Stallings, and Mecklenburg County complied with all applicable state water quality requirements.

7. North Carolina's state water quality regulations recognize the protection of biological integrity as a state water quality standard and as a best usage of all freshwaters. 15A N.C. Admin. Code 02B.0211(1) (2006).

8. North Carolina regulations require that "[t]he water shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard." 15A N.C. Admin. Code 02B.0211(2) (2006).

9. Biological integrity is "the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population densities and functional organization similar to that of reference conditions." 15A N.C. Admin. Code 02B.0200(11) (2006). Respondent's legal obligation to protect biological integrity necessarily includes the protection of the most sensitive species within a watershed. *Id.* Therefore, in the Goose Creek watershed, biological integrity encompasses the ability of the watershed to maintain the federally endangered Carolina heelsplitter population.

10. Furthermore, North Carolina's antidegradation policy requires that "existing uses" of all waters must be maintained. 15A N.C. Admin. Code 02B.0201(b) (2006). North Carolina water quality standards recognize that an existing use of a water body includes providing habitat for endangered or threatened species. 15A N.C. Admin. Code 02B.0110 (2006). Since providing habitat for the Carolina heelsplitter is an existing use in the Goose Creek watershed, the NPDES Phase II stormwater permits must ensure that habitat for the Carolina heelsplitter is maintained and protected. 15A N.C. Admin. Code 02B.0201(b) (2006).

11. Respondent violated the Clean Water Act and N.C. Gen. Stat. § 143.215.1(a)(6) (2006) when it issued the permits without ensuring compliance with all applicable state water quality standards. This conclusion is supported by numerous Findings of Fact, which will not be recited again in detail here but which may be summarized as follows:

a. The USFWS determined that certain stormwater mitigation measures were necessary to protect the federally endangered Carolina heelsplitter in Goose Creek. These measures include two-hundred-foot buffers on perennial streams and one-hundred-foot buffers on intermittent streams, a zero to six percent impervious surface threshold for triggering the need for structural stormwater controls, and water quality standards for the major constituents of concern.

b. The USFWS provided its determinations to Respondent in the form of a draft Technical Support Document for the Goose Creek Site-Specific Management Plan well before the permits were issued.

c. Respondent issued the three challenged NPDES Phase II stormwater permits with measures that fall well short of the USFWS's determinations. The permits set the impervious surface threshold at twenty-four percent and only require a thirty-foot setback of impervious surfaces from streams. According to the USFWS, the Carolina heelsplitter population in Goose Creek will be extirpated within two to five years if development is allowed as permitted by the three challenged NPDES Phase II stormwater permits.

12. Respondent also violated the state antidegradation policy when it issued the permits without ensuring that the existing use of providing habitat for the federally endangered Carolina heelsplitter was adequately protected from stormwater discharges. Again, as detailed in the Findings of Fact, Respondent ignored the determinations made by the USFWS regarding stormwater measures that would be necessary to protect the Carolina heelsplitter population in Goose Creek.

13. Because Respondent violated its own rules in issuing the permits without ensuring compliance with all state water quality standards and the state antidegradation policy, Respondent acted arbitrarily and capriciously in issuing the three challenged

NPDES stormwater permits. N.C. Gen. Stat. § 150B-23(a)(4) (2006). An agency action is arbitrary and capricious if it clearly shows “a lack of fair and careful consideration or want of impartial, reasoned decision-making.” *Comm’r. of Ins. v. Rate Bureau*, 300 N.C. 381, 269 S.E. 2d 547 (1980). When an agency’s decision is not in accordance with its own rules or policies, the agency has shown a lack of fair and careful consideration and has acted arbitrarily and capriciously. *Joyce v. Winston-Salem State University*, 91 N.C. App. 153 (1988).

14. Because Respondent violated its own regulations and the requirements of the federal Clean Water Act, Respondent also exceeded its statutory authority, failed to use proper procedure, and acted contrary to law. N.C. Gen. Stat. § 150B-23(a)(1)-(5) (2006).

Contested Issue No. 2:

15. The federal regulations implementing the Phase II permitting program require regulated entities to “develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants . . . to the maximum extent practicable, to protect water quality, and to satisfy the appropriate requirements of the Clean Water Act.” 40 C.F.R. § 122.34(a) (2006).

16. The requirement to reduce discharges to the maximum extent practicable is distinct from other requirements under 40 C.F.R. § 122.34(a) (2006). Under this requirement, permittees may be required to go beyond compliance with state water quality standards and implement stormwater measures that are more than standard practice.

17. “Maximum extent practicable” means to the fullest degree technologically feasible for the protection of water quality, except where costs are wholly disproportionate to the potential benefits. See *Haeuser v. Department of Law*, 97 F.3d 1152, 1155 (9th Cir. 1996); *Rybachek v. United States E.P.A.*, 904 F.2d 1276, 1289 (9th Cir. 1990); *Ass’n of Pac. Fisheries v. United States E.P.A.*, 615 F.2d 794, 805 (9th Cir. 1980). This standard requires more of permittees than mere compliance with water quality standards or numeric effluent limitations designed to meet such standards. *Envtl. Def. Center, Inc. v. United States E.P.A.*, 319 F.3d 398, 425-26 (9th Cir. 2003).

18. The term “maximum extent practicable” in the stormwater context implies that the mitigation measures in a stormwater permit must be more than simply adopting standard practices. This definition applies particularly in areas where standard practices are already failing to protect water quality, such as the Goose Creek watershed.

19. Respondent violated 40 C.F.R. § 122.34(a) (2006) because it failed to require stormwater measures that achieve the maximum extent practicable standard. As set out more fully in the Findings of Fact, the permits set the impervious surface thresholds for structural controls at twenty-four percent and require only thirty-foot setbacks. These limits do not reduce discharge to the maximum extent practicable. The USFWS has provided Respondent with measures that, if implemented, would reduce stormwater pollution into Goose Creek to the maximum extent practicable. Those measures include a zero (or at a minimum a six percent) impervious surface threshold for structural stormwater controls, two-hundred foot undisturbed riparian buffers on perennial streams, one-hundred foot undisturbed riparian buffers on intermittent streams, setbacks on all new disturbances in the one-hundred year floodplain, and water quality standards for ammonia, phosphorus, nitrate-nitrite, and copper. Those measures constitute what is “technologically feasible” in Goose Creek and thus should have been incorporated into the permits. Furthermore, other types of structural controls are available, such as infiltration measures, which would reduce discharges more than the measures contained in the permits. The limits in the permits are no more than standard practice and as such do not meet the maximum extent practicable standard.

20. The Clean Water Act requires that all effluent limitations and pollution control terms or limitations must be included in the NPDES permit. See 33 U.S.C. §§ 1311(a)-(b), 1342(a) (2006).

21. An effluent limitation is “any restriction established by a State . . . on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources.” 33 U.S.C. § 1362(11) (2006).

22. The challenged permits require the permittees to develop and implement stormwater management plans “to reduce the discharge of pollutants . . . to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act.” As explained more fully in Findings of Fact 66-71, these stormwater management plans contain effluent limitations which are not a part of the NPDES permit because Respondent did not attach or annex the stormwater management plans to the permits. Therefore, Respondent violated 33 U.S.C. §§ 1311(a)-(b) and 1342(a) in issuing the NPDES Phase II stormwater permits to Indian Trail, Stallings, and Mecklenburg County.

23. The Clean Water Act further requires that state agencies issuing NPDES permits follow certain notice and comment procedures in developing new permits. “[P]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by . . . any State under this Act shall be provided for, encouraged, and assisted by . . . the States.” 33 U.S.C. §1251(e) (2006).

24. The Second Circuit Court of Appeals recently invalidated federal regulations governing NPDES permitting for confined animal operations that did not require nutrient management plans to be included in the permit and noticed to the public. *Waterkeeper Alliance, Inc., et. al. v. EPA*, 2005 U.S. App. LEXIS 6533, 6540 (2nd Cir. 2005). “Since nutrient management plans embody all the relevant ‘site specific management practices,’ it is clear that . . . nutrient management plans are a sine qua non of the ‘regulation, standard, plan, or program’” under 33 U.S.C. § 1251(e) (2006). The Court held that because the management plans contained non-numerical effluent limitations in the form of best management practices, the rule “by failing to require that the terms of the nutrient management plans be included in NPDES permits—violates the Clean Water Act and is otherwise arbitrary and capricious in violation of the Administrative Procedure Act.”

25. In the stormwater permitting context, stormwater management plans are equivalent to nutrient management plans. The stormwater management plans are supposed to contain “all relevant ‘site specific management measures’” that will be implemented in the Goose Creek watershed to reduce the discharge of stormwater pollution. *Waterkeeper Alliance, Inc*, 2005 U.S. App. LEXIS at 43. Therefore, Respondent violated 33 U.S.C. §§ 1311(a)-(b) and 1342(a) by not including the plans in the NPDES Phase II stormwater permits.

26. As a necessary part of the NPDES permits, the stormwater management plans should also have been subject to the public participation requirement under 33 U.S.C. § 1251(e) (2006). Pursuant to 33 U.S.C. § 1342(j) (2006), “a copy of each permit application and each permit issued under this section shall be available to the public.” Since the three challenged NPDES Phase II permits were noticed without including the stormwater management plans, Respondent violated 33 U.S.C. §§ 1251(e), 1311, 1342(a) (2006). Further, Respondent violated 33 U.S.C. § 1342(j) (2006) by failing to provide copies of the stormwater management plans to members of the public who requested copies of the draft permit.

27. Because Respondent violated the requirements of the federal Clean Water Act and the federal regulations implementing the Phase II program, Respondent exceeded its statutory authority, failed to use proper procedure, acted contrary to law, and acted arbitrarily and capriciously. N.C. Gen. Stat. § 150B-23(a)(1)-(5) (2006).

Contested Issue No. 3:

28. NPDES permits must contain “any more stringent limitation . . . necessary to meet water quality standards.” 33 U.S.C. § 1311(b)(1)(C) (2006). Pursuant to this requirement, NPDES permits for discharges to waters for which a TMDL has been established must be consistent with the waste load allocation in the TMDL. 40 C.F.R. §§ 122.44(d)(a)(vii)(B); 130.12(a) (2006).

29. As discussed more fully in the Findings of Fact 72-79, Goose Creek is subject to a final TMDL for fecal coliform discharges. The waste load allocation in the Goose Creek TMDL calls for a ninety-two point five percent (92.5%) reduction in current fecal coliform discharges.

30. The challenged permits do not contain limits and conditions that will reduce current discharges. The permits as written will in fact increase fecal coliform discharges.

31. By not including limits and conditions that will reduce current discharges of fecal coliform, Respondent has violated 33 U.S.C. § 1311(b)(1)(C) and 40 C.F.R. §§ 122.44 (d)(a)(vii)(B) and 130.12(a).

32. Because Respondent violated the requirements of the federal Clean Water Act, Respondent also exceeded its statutory authority, failed to use proper procedure, acted contrary to law, and acted arbitrarily and capriciously. N.C. Gen. Stat. § 150B-23(a)(1)-(5) (2006).

BASED UPON the foregoing Stipulations, Findings of Fact and Conclusions of Law, the undersigned renders the following:

DECISION

That Respondent must reopen, amend, and reissue the NPDES permits to incorporate the USFWS’s determinations of measures necessary to protect the habitat for the Carolina heelsplitter. Those measures are two-hundred foot buffers for perennial streams, one-hundred foot buffers for intermittent streams, a zero percent impervious surface threshold for structural stormwater

controls, no new impervious surface in the one-hundred year floodplain, and water quality standards for ammonia, copper, nitrate-nitrite, and phosphorus.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Decision and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a). In accordance with N.C. Gen. Stat. § 150B-36, the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the Administrative Law Judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

The agency that will make the final decision in this case is the North Carolina Department of Environment and Natural Resources. The agency is required by N.C.G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This the 13th day of October, 2006 .

Fred G. Morrison Jr.
Senior Administrative Law Judge