

- (3) Is subject to a variance granted for inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements prescribed by a variance or exemption.

(b) It shall be the duty of the supplier as soon as possible, but not later than 48 hours after discovery, to notify the Department and give public notification as prescribed by the rules.

§130-2512. Prohibited acts.

(a) The following acts are prohibited:

- (1) Failure by a supplier of water to comply with this Article, an order issued under this Article, or the drinking water rules;
- (2) A supplier of water making or providing any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the drinking water rules;
- (3) Refusal by a supplier of water to allow the Department, or the Tribe's Public Health Department under separate authority, to inspect a public water system;
- (4) The willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;
- (5) The discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste has been passed through a system of purification approved by the Department; and
- (6) The failure by a person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of a public water system.

§130-2513. Powers of the Secretary.

(a) In addition to the authorities authorized in this Article, in order carry out the provisions of this Part, the Secretary of the Division of Operations is authorized to:

- (1) Enter into agreements or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;
- (2) Receive financial and technical assistance from the federal government and other public or private agencies;
- (3) Require public water systems to take actions or make modifications as necessary to comply with the requirements of this Article or the drinking water rules;
- (4) Prescribe policies and procedures necessary or appropriate to carry out the Department's function under this Article;
- (5) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this Article. The fees shall not exceed two hundred dollars (\$200.00) for each analysis, and to establish fees for any other permit or other costs determined and authorized by the rules adopted by the Division.

1 **§130-2514. Construction of this Part.**

2 This Part shall be interpreted as giving the Division of Operations the authority needed to
3 assume primary enforcement responsibility under the federal clean drinking water act.
4

5 **§130-2515. Public water system operating permit and permit fee.**

6 No person shall operate a community or non-transient non-community water system who has not
7 been issued an operating permit by the Department. A community or non-transient non-
8 community water system operating permit shall be valid from January 1 through December 31 of
9 each year unless suspended or revoked by the Department for cause. The Department shall adopt
10 rules concerning permit fees, issuance and renewal and permit suspension and revocation.
11

12 **§130-2516. Reporting.**

13 Reports required to be submitted under this Part or under rules adopted by the Division
14 shall be submitted electronically on a form specified by the Department. The Department may
15 waive the requirement for electronic submission of a report if the water system demonstrates that
16 it lacks the technical capability to report electronically.
17

18 **§130-2517. Sanitation of watersheds; rules; inspections; local source protection planning.**

19
20 (a) The Division of Agriculture and Natural Resources shall adopt rules governing the
21 sanitation of watersheds from which public drinking water supplies are obtained. In adopting
22 these rules the Division is authorized to consider the different classes of watersheds, taking
23 into account general topography, nature of watershed development, density of population and
24 need for frequency of sampling of raw water. The rules shall govern the keeping of livestock,
25 operation of recreational areas, maintenance of residences and places of business, disposal of
26 sewage, establishment of cemeteries or burying grounds, and any other factors which would
27 endanger the public water supply.

28 (b) Any supplier of water operating a public water system and furnishing water from
29 unfiltered surface supplies shall inspect the watershed area at least quarterly, and more often
30 when the Division of Agriculture and Natural Resources determines that more frequent
31 inspections are necessary.

32 (c) Every supplier of water operating a public water system treating and furnishing water
33 from surface supplies shall create and implement a source water protection plan (SWPP). The
34 Division of Agriculture and Natural Resources shall adopt rules that provide all of the following:

- 35 (1) A standardized format and required plan elements for public water systems
36 based on the system type, source type, watershed classification, population
37 served, source susceptibility to contamination, proximity of potential
38 contamination sources to the intake, lack of water supply alternatives, or
39 other characteristics the Tribe finds to be relevant.
40 (2) Schedules for creating a SWPP, implementing mandatory provisions of
41 the SWPP, and for review and update of the SWPP by suppliers of water.
42 (3) Reporting requirements sufficient for the Division to monitor the creation,
43 implementation, and revision by suppliers of water. The Division may
44 provide different reporting requirements based on the public water system
45 characteristics set forth in subdivision (1) of this subsection.
46
47

1 Part 26.

2 Wastewater Systems.

3 §130-2600. Purpose.

4
5 Installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types
6 of wastewater systems in a faulty or improper manner and in areas where unsuitable soil and
7 population density adversely affect the efficiency and functioning of these systems, has a
8 detrimental effect on the public health and environment through contamination of land,
9 groundwater and surface waters. Recognizing, however, that wastewater can be rendered
10 ecologically safe and the public health protected if methods of wastewater collection, treatment
11 and disposal are properly regulated and recognizing that wastewater collection, treatment and
12 disposal will continue to be necessary to meet the needs of an expanding population, the Tribal
13 Council intends to ensure the regulation of wastewater collection, treatment and disposal systems
14 so that these systems may continue to be used, where appropriate, without jeopardizing the public
15 health.

16
17 §130-2601. Definitions.

18 (a) The following definitions shall apply throughout this Part:

- 19 (1) "Accepted wastewater dispersal system" means any subsurface wastewater
20 dispersal system, other than a conventional wastewater system, that: (i) has been
21 previously approved as an innovative wastewater dispersal system by the
22 Department; (ii) has been in general use in this State as an innovative wastewater
23 dispersal system for more than five years; and (iii) has been approved by the
24 Commission for general use or use in one or more specific applications. An
25 accepted wastewater dispersal system may be approved for use in applications for
26 which a conventional wastewater system is unsuitable. The Commission may
27 impose any design, operation, maintenance, monitoring, and management
28 requirements on the use of an accepted wastewater dispersal system that it
29 determines to be appropriate.
- 30 (2) "Approved agency for special inspection" means an individual, corporation,
31 company, association, or partnership that is objective, competent, and independent
32 from the contractor who is responsible for the work that is inspected. The agency
33 shall disclose possible conflicts of interest in a manner such that objectivity can
34 be confirmed.
- 35 (3) "Approved special inspector" means a person who demonstrates competence to
36 the satisfaction of the professional engineer who designed the wastewater system
37 for the inspection of the construction or operation subject to special inspection.
- 38 (4) "Construction" means any work at the site of placement done for the purpose of
39 preparing a residence, place of business or place of public assembly for initial
40 occupancy, or subsequent additions or modifications which increase sewage flow.
- 41 (5) "Construction observation" means the visual observation of the construction and
42 installation of the wastewater system for general conformance with the
43 construction documents prepared by the professional engineer who designed the
44 wastewater system. Construction observation that is conducted by the professional
45 engineer who designed the wastewater system does not include or waive the
46 requirement to conduct special inspections.

- (6) "Conventional wastewater system", "conventional sewage system", or "conventional septic tank system" means a subsurface wastewater system that consists of a traditional septic or settling tank and a gravity-fed subsurface dispersal field that uses washed natural stone or gravel of approved size and grade and piping to distribute effluent to soil in one or more nitrification trenches and that does not include any other appurtenance.
- (7) "Department" means the Department of Infrastructure and Public Facilities
- (8) "Division" means the Division of Operations.
- (9) "Engineered option permit" means an on-site wastewater system that is permitted pursuant to the rules adopted by the Division in accordance with this Article, and is designed by a professional engineer who is licensed under Chapter 89C of the North Carolina General Statutes who has expertise in the design of on-site wastewater systems.
- (10) "Ground absorption system" means a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal.
- (11) "Industrial process wastewater" means any water-carried waste resulting from any process of industry, manufacture, trade, or business.
- (12) "Innovative wastewater system" means any wastewater system, other than a conventional wastewater system or a provisional wastewater system, or any technology, device, or component of a wastewater system that has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate. A wastewater system approved by a nationally recognized certification body and in compliance with the ongoing verification program of such body may submit a sampling protocol for innovative system approval that reduces the data sets required for such approval by fifty percent (50%). Such an application shall include all of the data associated with the nationally recognized certification body's verification of the system's performance.
- (13) "Licensed geologist" means a person who is licensed as a geologist under the provisions of Chapter 89E of the N.C.General Statutes.
- (14) "Licensed soil scientist" has the same meaning as in N.C.G.S. 89F-3.
- (15) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.
- (16) "Maintenance" means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.
- (17) "Nationally recognized certification body" means a third-party certification body for wastewater systems or system components that is accredited by an entity

1 widely recognized in the United States such as the American National Standards
2 Institute, the Standards Council of Canada, or the International Accreditation
3 Service, Inc.

4 (18) "Provisional wastewater system" means any wastewater system or any
5 technology, device, or component of a wastewater system that, on the basis of
6 (i) research acceptable to the Department or (ii) approval of the wastewater
7 system by a nationally recognized certification body for a period that exceeds
8 one year for research, testing, or trial use under actual field conditions in this
9 State pursuant to a protocol that has been approved by the Department.

10 (19) "Pretreatment" means any biological, chemical, or physical process or system
11 for improving wastewater quality and reducing wastewater constituents prior to
12 final treatment and disposal in a subsurface wastewater system and includes,
13 but is not limited to aeration, clarification, digestion, disinfection, filtration,
14 separation, and settling.

15 (20) "Professional engineer" has the same meaning as in N.C.G.S. 89C-3.

16 (21) "Public or community wastewater system" means a single system of wastewater
17 collection, treatment and disposal owned and operated by the Tribe, or another
18 private or municipal system.

19 (22) "Relocation" means the displacement of a residence or place of business from
20 one site to another.

21 (23) "Repair" means the extension, alteration, replacement, or relocation of existing
22 components of a wastewater system.

23 (24) "Residence" means a private home, dwelling unit in a multiple family structure,
24 hotel, motel, summer camp, labor work camp, manufactured home, institution
25 or any other place where people reside.

26 (25) "Secretary" means the Secretary of the Division of Operations.

27 (26) "Septic tank system" means a subsurface wastewater system consisting of a
28 settling tank and a subsurface disposal field.

29 (27) "Sewage" means the liquid and solid human body waste and liquid waste
30 generated by water-using fixtures and appliances, including those associated
31 with food handling. The term does not include industrial process wastewater or
32 sewage that is combined with industrial process wastewater.

33 (28) "Site plan" means a drawing not necessarily drawn to scale that shows the
34 existing and proposed property lines with dimensions, the location of the
35 facility and appurtenances, the site for the proposed wastewater system, and the
36 location of water supplies and surface waters.

37 (29) "Special inspection" means a required inspection of the materials, installation,
38 fabrication, erection, or placement of components and systems that require
39 special expertise to ensure compliance with referenced standards and the
40 construction documents prepared by the professional engineer.

41 (30) "Wastewater" means any sewage or industrial process wastewater discharged,
42 transmitted, or collected from a residence, place of business, place of public
43 assembly, or other places into a wastewater system.

44 (31) "Wastewater system" means a system of wastewater collection, treatment, and
45 disposal in single or multiple components, including a ground absorption
46 system, privy, septic tank system, public or community wastewater system,

1 wastewater reuse or recycle system, mechanical or biological wastewater
2 treatment system, any other similar system, and any chemical toilet used only
3 for human waste. A wastewater system located on multiple adjoining lots or
4 tracts of land under common ownership of tribal possessory holders shall be
5 considered a single system for purposes of permitting under this Article.
6

7 **§130-2602. Wastewater collection, treatment and disposal; rules.**
8

9 (a) A person owning or controlling a residence, place of business or a place of public
10 assembly shall provide an approved wastewater system. Except as may be allowed under another
11 provision of law, all wastewater from water-using fixtures and appliances connected to a water
12 supply source shall discharge to the approved wastewater system. A wastewater system may
13 include components for collection, treatment and disposal of wastewater.

14 (b) Any proposed site for a residence, place of business, or a place of public assembly
15 located in an area that is not served by an approved wastewater system for which a new wastewater
16 system is proposed or repair is necessary for compliance may be evaluated for soil conditions and
17 site features by a licensed soil scientist or licensed geologist. For purposes of this subsection, "site
18 features" include topography and landscape position; soil characteristics (morphology); soil
19 wetness; soil depth; restrictive horizons; available space; and other applicable factors that involve
20 accepted public health principles.

21 (c) All wastewater systems shall be regulated by the Department of Infrastructure and
22 Public Facilities under rules adopted by the Division

23 (d) The rules of the Division shall address at least the following: Wastewater
24 characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation,
25 operation, maintenance and performance of wastewater collection, treatment and disposal systems;
26 Soil morphology and drainage; Topography and landscape position; Depth to seasonally high
27 water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters,
28 estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other
29 bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal
30 systems in a geographical area; Requirements for issuance, suspension and revocation of permits;
31 and Other factors which affect the effective operation and performance of wastewater collection,
32 treatment and disposal systems. The rules regarding required design capacity and required design
33 volume for wastewater systems shall provide that exceptions may be granted upon a showing that
34 a system is adequate to meet actual daily water consumption.

35 (e) The rules of the Division shall classify systems of wastewater collection, treatment and
36 disposal according to size, type of treatment and any other appropriate factors. The rules shall
37 provide construction requirements, including pretreatment and system control requirements,
38 standards for operation, maintenance, monitoring, reporting, and ownership requirements for each
39 classification of systems of wastewater collection, treatment and disposal in order to prevent, as
40 far as reasonably possible, any contamination of the land, groundwater and surface waters.

41 (f) A preconstruction conference with the owner or developer, or an agent of the owner or
42 developer, and a representative of the Division shall be required for any authorization for
43 wastewater system construction

44 (g) Except as provided in this subsection, a chemical or portable toilet may be placed at
45 any location where the chemical or portable toilet can be operated and maintained under sanitary
46 conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water

1 closet or urinal where a water closet or urinal connected to a permanent wastewater treatment
2 system is required by the North Carolina State Building Code, except that a chemical or portable
3 toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical
4 or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or
5 wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a
6 chemical or portable toilet used for human waste except into a wastewater system that has been
7 approved by the Department under rules adopted by the Division.

8
9 **§130-2603. Effluent filters and access devices for certain septic tank systems.**

10 (a) The person who manufactures, installs, repairs, or pumps any septic tank to be installed
11 in this jurisdiction as a part of a septic tank system that is designed to treat 3,000 gallons per day
12 or less of sewage shall provide an effluent filter approved by the Department. Any person who
13 manufactures, installs, repairs, or pumps systems described in this section may purchase and install
14 any approved filters on the systems. The person who installs the effluent filter shall install the
15 effluent filter as a part of the septic tank system in accordance with the specifications provided by
16 the manufacturer of the effluent filter. An effluent filter shall:

- 17 (1) Be made of materials that are capable of withstanding the corrosives to which
18 septic tank systems are normally subject.
19 (2) Prevent solid material larger than one-sixteenth of an inch, as measured along
20 the shortest axis of the material, from entering the drainfield.
21 (3) Be designed and constructed to allow for routine maintenance.
22 (4) Be designed and constructed so as not to require maintenance more frequently
23 than once in any three-year period under normally anticipated use.

24 (b) The access device shall provide access to each compartment of a septic tank for
25 inspection and maintenance either by means of an opening in the top of the septic tank or by a riser
26 assembly and shall include an appropriate cover. The access device shall:

- 27 (1) Be of sufficient size to facilitate inspection and service.
28 (2) Be designed and constructed to equal or exceed the minimum loading
29 specifications applicable to the septic tank.
30 (3) Prevent water entry.
31 (4) Come to within six inches of the finished grade.
32 (5) Be visibly marked so that the access device can be readily located.

33
34 **§130-2604. Improvement permit and authorization for wastewater system construction**
35 **required.**

- 36 (a) Any proposed site for a residence, place of business, or place of public assembly in an area
37 not served by an approved wastewater system shall be evaluated by the department in
38 accordance with rules adopted pursuant to this Article.
39 (b) The department shall issue an authorization for wastewater system construction authorizing
40 work to proceed and the installation or repair of a wastewater system when it has
41 determined after a field investigation that the system can be installed and operated in
42 compliance with this Part and rules adopted pursuant to this Article. No improvement
43 permit or authorization for wastewater system construction shall be required for
44 maintenance of a wastewater system.
45

1 (c) Unless the Division otherwise provides by rule, plans, and specifications for all wastewater
2 systems designed for the collection, treatment, and disposal of industrial process
3 wastewater shall be reviewed and approved by the Department prior to the issuance of an
4 authorization for wastewater system construction.

5 (d) Inspections, Construction Observations, and Reports. –

6 (1) Site visits. – The tribal health department may, at any time, conduct a site visit
7 of the wastewater system.

8 (e) Operations and Management. –

9 (1) Each wastewater system, whether from a professional engineer designing a
10 wastewater system or otherwise, shall have a written operations and
11 management program or instructions based on the size and complexity of the
12 wastewater system and shall provide the written program or instructions to the
13 owner.

14 (2) The owner of the wastewater system shall be responsible for the continued
15 adherence to the operations and management program or instructions.

16 (f) Post-Construction Conference. – The Division shall adopt rules for whether a post
17 construction conference shall be required before start-up and whether any required verification of
18 system design or system components will be required before use of a new wastewater system.

19 (g) Required Documentation. –

20 (1) At the completion of a new or modified wastewater system, the professional
21 engineer who designed the wastewater system, or other person as required by
22 rule, shall deliver to the owner with a copy to the Division, of the signed, sealed,
23 and dated copies of the engineer's report, which, for purposes of this subsection,
24 shall include the following:

25 (A) The evaluation of soil conditions and site features as prepared by either
26 the licensed soil scientist or licensed geologist.

27 (B) The drawings, specifications, plans, and reports of the wastewater
28 system; the on-site wastewater system contractor's signed statement of
29 responsibility; records of all special inspections; and the final inspection
30 report documenting the correction of any identified discrepancies.

31 (C) The operator's management program or instruction manual.

32 (D) Any reports and findings related to the design and installation of the
33 wastewater system.

34 (E) Any other requirements deemed necessary by the Division in rules
35 passed by the Division.

36
37 **§130-2605. Inspection; operation permit required.**

38 (a) No system of wastewater collection, treatment and disposal shall be covered or placed
39 into use by any person until an inspection by the Division that the system has been installed or
40 repaired in accordance with any conditions of the rules, and this Part.

41 (b) Upon determining that the system is properly installed or repaired and that the system
42 is capable of being operated in accordance with the conditions of the rules, the Department shall
43 issue an operation permit for the wastewater system.

44
45 **§130-2606. Authorization for wastewater system construction required before other permits**
46 **to be issued.**

1 Where construction, location or relocation is proposed to be done upon a residence,
2 place of business or place of public assembly, no permit required for electrical, plumbing, heating,
3 air conditioning or other construction, location or relocation activity under any provision of tribal
4 law shall be issued until an authorization for wastewater system construction has been issued.

5
6 **§130-2607. Residential wastewater treatment systems.**

7 All individual residential wastewater treatment systems shall be permitted and conform
8 to the rules adopted by the Division.

9 **Part 27.**

10 **Mosquito and Vector Control.**

11 **§130-2700. Title.**

12 This Part shall be known as the Mosquito and Vector Control Act of the Eastern Band of
13 Cherokee Indians.

14 **§130-2701. Mission and Purpose.**

15 (a) Tribal Council finds and declares all the following:

- 16
- 17 1. The climate and topography of tribal lands support a wide diversity of biological
18 organisms.
- 19 2. The Tribes' connection to tourism and transiency increase the transport of vectors and
20 pathogens.
- 21 3. Most of the organisms are beneficial, but some are vectors of human disease pathogens or
22 directly cause other human diseases such as hypersensitivity, envenomization, and
23 secondary infections.
- 24 4. Some of these diseases, such as mosquito-borne viral encephalitis, can be fatal, especially
25 in children and older individuals.
- 26 5. The three most common viral diseases transmitted by mosquitoes (arboviruses) in North
27 Carolina that result in human illness are Eastern Equine Encephalitis (EEE), LaCrosse
28 Encephalitis (LAC), and West Nile Virus (WNV) and cases of LAC have been confirmed
29 on tribal lands.
- 30 6. Individual protection against the vector-borne diseases is only partially effective.
- 31 7. Adequate protection of human health against vector-borne diseases is best achieved by an
32 organized public health program.
- 33 8. Protection of the Tribe and its communities against the discomforts and economic effects
34 of vector-borne diseases is an essential public service that is vital to public health, safety,
35 and welfare.
- 36 9. It has been demonstrated throughout the U.S. that mosquito and vector control programs
37 protect health and well-being of individuals and communities against the threats of
38 vector-borne disease.
- 39

1 (b) In enacting this Part, it is the intent of the Tribe to create and continue a broad statutory
2 authority with the power to conduct effective programs for surveillance, prevention,
3 abatement, and control of mosquitoes and other vectors.

4 (c) It is also the intent of the law to encourage cooperation with other public agencies,
5 jurisdictions and county partners to protect the public health, safety, and welfare of the
6 Tribe.

7 **§130-2702. Powers and Duties.**

8 (a) The Division of Agriculture and Natural Resources (DANR) shall maintain a program for
9 Mosquito and Vector Control including, but not limited to the following:

10 (1) Enacting rules and regulations to ensure the control of mosquitoes and vectors on the
11 tribal lands.

12 (2) Utilizing integrated pest control methods to prevent mosquitoes and vectors.

13 (3) Providing consultation and assistance to local businesses in developing programs for
14 vector control.

15 (4) Conducting surveillance or assisting with surveillance of mosquitoes and vectors.

16 (5) Coordinating and conducting emergency vector control, as required.

17 (6) Disseminating information to the public regarding protection from mosquito-borne and
18 vector-borne diseases.

19
20 **Part 28.**

21 **Dental Health.**

22 **§ 130-2800. Department to establish dental health program.**

23
24 The Division of Public Health and Human Services shall establish and administer a children's
25 dental health program for the delivery of prevention and educational services to preschool children,
26 and school age children through elementary school. The program shall include, but not be limited
27 to, child education, preventive activities such as fluoride varnish application, consultation,
28 screening and referral, technical assistance, and community coordination. The primary emphasis
29 of the program shall be the delivery of prevention and educational, services to preschool children
30 and elementary school-age children.

31
32 **Part 29.**

33 **Postmortem Investigation and Disposition.**

34 **§ 130-2900. Division of Public Health and Human Services shall assure inspection for**
35 **sanitation purposes through agreement with local county health departments.**

36
37 For purpose of promoting a safe and healthful environment and to collect information and
38 remained informed about deaths occurring on tribal lands, the Division of Public Health and
39 Human Services shall assure that there are appropriate measures through agreements with the local
40 county or state authorities for the proper handling and investigation of persons found deceased on
41 tribal lands. The Secretary of the Division of Public Health and Human Services shall ensure that

documentation of such agreements is on record within the Division and remain current. The Secretary shall adopt rules under Chapter 150 of the Cherokee Code to provide for the enforcement of the laws and rules adopted by the Division to ensure the deceased bodies are properly documented, handled, and disposed of and that Tribal agencies or entities within law enforcement and emergency management are trained to, in collaboration with the local county or state agency, identify deaths that are a result suspicious or unnatural causes based on all of the evidence available. It is the policy of the Tribe to monitor deaths due to substance use or abuse, accidental overdoses, suicide and crimes committed on tribal lands. The Division of Public Health and Human Services shall collaborate with tribal law enforcement, emergency management and the Cherokee Indian Hospital Authority to adopt and enforce rules that are necessary to achieve these purposes and tribal law enforcement, emergency management and the Cherokee Indian Hospital Authority shall cooperate with the Division of Public Health and Human Services to achieve these ends.

§ 130-2901. Notification concerning body of deceased individual.

When a deceased body is reported to the Tribe's law enforcement, emergency services departments or the Cherokee Indian Hospital, the agency receiving the report shall document the report on forms established by the Division of Public Health and Human Services. When a body is brought to tribal lands from another State for disposal and there is reason to believe that the death was not investigated properly or that there is not an adequate certificate of death, the body shall be examined according the agreement between the Tribe and local or state agency responsible for documenting and establishing cause of death. These deaths may be investigated by the same procedure as deaths occurring the State of North Carolina under N.C.G.S. 130A-383.

§ 130-2902. Medical examiner's permission necessary before embalming, burial and cremation.

(a) The Tribe adopts and requires adherence to N.C.G.S. 130A-383 and 130A- 384 in this jurisdiction. No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner pursuant to N.C.G.S. 130A-383 or 130A-384, shall embalm, bury or cremate the body without the permission of the medical examiner.

(b) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than 24 hours after birth or to deaths of patients resulting only from natural disease and occurring in a licensed hospital unless the death falls within the jurisdiction of the medical examiner under N.C.G.S. 130A-383 or 130A-384.

§ 130-2903. Handling and transportation of bodies.

(a) It shall be the duty of the physician licensed to practice medicine under N.C.G.S. Chapter 90 or laws of the Tribe attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or transmissible spongiform encephalopathies to provide written notification to all individuals handling the body of the proper precautions to prevent infection. This written notification shall be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician shall notify the

1 funeral service personnel verbally of the precautions required in subsections (b) and (c) as soon as
2 the physician becomes aware of the death.

3 (b) The body of a person who died from smallpox or plague shall not be embalmed. The
4 body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape
5 of odors as soon as possible after death and before the body is removed from the hospital room,
6 home, building, or other premises where the death occurred. This case shall not be reopened except
7 with the consent of the Secretary of the Division of Public Health and Human Services.

8 (c) Persons handling bodies of persons who died and were known to have HIV infection,
9 hepatitis B infection, transmissible spongiform encephalopathies or rabies shall be provided
10 written notification to observe blood and body fluid precautions.

11
12
13 **§ 130-2904. Authority to dispose of body or body parts.**

14 (a) An individual at least 18 years of age may authorize the type, place, and method of
15 disposition of the individual's own dead body by methods in the following order:

16 (1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of
17 Chapter 90 of the North Carolina General Statutes or pursuant to a cremation
18 authorization form executed pursuant to Article 13C of Chapter 90 of the North
19 Carolina General Statutes.

20 (2) Pursuant to a health care power of attorney to the extent provided in Article 3
21 of Chapter 32A of the North Carolina General Statutes or tribal law.

22 (3) Pursuant to a written will.

23 (4) Pursuant to a written statement other than a will signed by the individual and
24 witnessed by two persons who are at least 18 years old.

25 (b) An individual at least 18 years of age may delegate his or her right to dispose of his or
26 her own dead human body to any person by one of the following methods:

27 (1) Any means authorized in subsection (a) of this section.

28 (2) By completing United States Department of Defense Record of Emergency
29 Data, DD Form 93, or its successor form. A delegation made by filling out this
30 form shall only be effective if the individual dies under the circumstances
31 described in 10 U.S.C. § 1481(a)(1) through (8). A delegation under this
32 subdivision takes precedence over any of the methods set forth in this section.

33 (c) If a decedent has left no written authorization for the disposal of the decedent's body as
34 permitted under subsection (a) of this section, the following competent persons in the order listed
35 may authorize the type, method, place, and disposition of the decedent's body:

36 (1) The surviving spouse.

37 (2) A majority of the surviving children over 18 years of age, who can be located
38 after reasonable efforts.

39 (3) The surviving parents.

40 (4) A majority of the surviving siblings over 18 years of age, who can be located
41 after reasonable efforts.

42 (5) A majority of the persons in the classes of the next degrees of kinship, in
43 descending order, who, under State law, would inherit the decedent's estate if
44 the decedent died intestate who are at least 18 years of age and can be located
45 after reasonable efforts.

(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

(8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.

(9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

(d) This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the North Carolina General Statutes, to prohibit the substitution of a preneed licensee as authorized under N.C.G.S. 90-210.63, or to permit modification of preneed contracts under N.C.G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(e) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section.

(f) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(g) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the North Carolina General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the North Carolina General Statutes.

Part 30.

Health Assessments for Children in the Cherokee Schools.

§ 130-3000. Health assessment required.

(a) Every child entering kindergarten in the Cherokee Central School System or New Kituwah Academy shall have received a health assessment according to N.C.G.S. § 130A-440(b), (c) and (d). It shall be the responsibility of the school's administration to ensure these North Carolina State laws for health assessments are incorporated into the system's rules, policy and procedures. The health assessment shall be made no more than 12 months prior to the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to N.C.G.S. §130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal.

(b) Every parent, guardian, or person standing in loco parentis shall submit proof of a health assessment for each child who is presented for admission into kindergarten or a higher grade in the Cherokee Central School System or New Kituwah Academy school system for the first time. The health assessment shall be made no more than 12 months prior to the date the child would have first been eligible for initial entry into the public schools. Within 30 calendar days of a child's first day of attendance in the public schools, a health assessment transmittal form, developed pursuant to N.C.G.S. 130A-441, indicating that the child has received the health assessment required by this section, shall be presented to the school principal. The only health assessment transmittal form utilized by public schools shall be the form developed pursuant to N.C.G.S. 130A-441.

§ 130-3001. Early Childhood Vision Care.

(a) Vision Screening Required for Children Entering Kindergarten. – Every child on tribal lands entering kindergarten in the Cherokee schools, beginning with the 2019-2020 school year, shall obtain vision screening in accordance with vision screening standards adopted by the North Carolina's Governor's Commission on Early Childhood Vision Care. Within 180 days of the start of the school year, the parent of the child shall present to the school principal or the principal's designee certification that the child has, within the past 12 months, obtained vision screening conducted by a licensed physician, optometrist, physician assistant, nurse practitioner, registered nurse, orthoptist, or a vision screener certified by Prevent Blindness North Carolina, or a comprehensive eye examination performed by an ophthalmologist or optometrist. The health assessment transmittal form required pursuant to N.C.G.S. 130A-440 qualifies as certification that the child has obtained the required vision screening. All providers conducting vision screening shall provide each parent in writing the results of the vision screening on forms bearing the signature of the provider. The provider shall also orally communicate this information to the parent and shall take reasonable steps to ensure that the parent understands the information communicated. In the instance where a child enters the first grade without having been enrolled in a kindergarten program requiring a vision screening, the requirements for vision screening under this subsection shall apply.

(b) Comprehensive Eye Examination. – For children who receive and fail to pass a vision screening as required under subsection (a) of this section, a comprehensive eye examination is required. If a public school teacher, administrator, or other appropriate school personnel has reason to believe that a child enrolled in kindergarten through third grade is having problems with vision, the school personnel may recommend to the child's parent that the child have a comprehensive eye examination. Notification to the parent shall also inform the parent that funds may be available from the Governor's Commission on Early Childhood Vision Care to pay providers for the examination, including corrective lenses.

(c) The comprehensive eye examination shall be conducted by a duly licensed optometrist or ophthalmologist. The comprehensive eye examination conducted pursuant to this section shall consist of a complete and thorough examination of the eye and shall include:

- (1) Measurement of visual acuity;
- (2) Ocular alignment and motility;
- (3) Depth perception – stereopsis;
- (4) Fusion;
- (5) Slit lamp examination of the lid margins, conjunctivae, cornea, anterior chamber, iris, and crystalline lens;

1 (6) Examination of the ocular adnexa, the anterior segment, and pupils; and

2 (7) Cycloplegic refraction and dilated fundus examination.

3 (d) Health assessment vision screening under N.C.G.S. 130A-440 is not a comprehensive
4 eye examination for purposes of this section.

5 (e) The results of a comprehensive eye examination conducted under this section shall be
6 included on the comprehensive eye examination transmittal form developed by the Commission
7 pursuant to N.C.G.S. 143B-216.75 and shall contain a summary of the comprehensive eye
8 examination performed by the optometrist or ophthalmologist. Any treatment recommendations
9 by the optometrist or ophthalmologist, such as spectacles for schoolwork, shall appear in the
10 summary and school health card. The provider shall present a signed transmittal form to the parent
11 upon completion of the examination. The parent shall submit the transmittal form to the school in
12 accordance with this section.

13 (f) N.C.G.S. 130A-441, 130A-442, and 130A-443, pertaining to health assessments, apply
14 to comprehensive eye examinations required under this section.

15 (g) No child shall be excluded from attending school for a parent's failure to obtain a
16 comprehensive eye examination required under this section. If a parent fails or refuses to obtain a
17 comprehensive eye examination or to provide the certification of a comprehensive eye
18 examination, the school shall send a written reminder to the parent of required eye examinations
19 and shall include information about funds that may be available from the Tribe or the North
20 Carolina Governor's Commission on Early Childhood Vision Care. The school shall provide a
21 copy of the written reminder to the Tribe's Director of the Department of Human Services who
22 shall ensure that family services are offered to the family to the degree necessary to ensure that the
23 child's well-being and fitness for school is ensured.

24 (h) As used in this section, the term "parent" means the parent, guardian, authorized
25 caregiver or person standing in loco parentis.

26
27 **§ 130-3002. Reporting.**

28 (a) Health assessment results shall be submitted on the statewide standardized health
29 assessment transmittal form developed by the Department of Public Instruction and submitted to
30 the school principal by either (i) the parent, guardian, or authorized caregiver or person standing
31 in loco parentis for the student or (ii) the health care provider specified in N.C.G.S. 130A-440(c),
32 if authorized in writing by the parent, guardian, or person standing in loco parentis. The health
33 assessment transmittal form shall include only the items listed below:

34 (1) A statement that the form and information on the form will be maintained on
35 file in the school once it has been completed.

36 (2) The name of the school the student is attending or will attend.

37 (3) A student information section to be completed by the parent, guardian, or
38 person standing in loco parentis for the student that requires the following about
39 the student: first, middle, and last name; date of birth; sex; race; ethnicity;
40 county of residence; and home address.

41 (4) A parent information section that includes the following: name of the parent,
42 guardian, or person standing in loco parentis for the student; a telephone
43 number; and space allowing the parent to share any concerns about the student's
44 health with those individuals authorized to have access to the form in subsection
45 (b) of this section.

- 1 (5) A section that includes the following information, if applicable, supplied by a
2 health care provider specified in N.C.G.S. 130A-440(c):
3 (A) A list of medications prescribed for the student.
4 (B) A list of the student's allergies, the type of allergic reaction, and the
5 response required.
6 (C) Guidance regarding a special diet for the student.
7 (D) Health-related recommendations to enhance the student's school
8 performance.
9 (E) Information on whether the student passed a vision screening and any
10 concerns related to the student's vision.
11 (F) Information on whether the student passed a hearing screening and any
12 concerns related to the student's hearing.
13 (G) An opportunity to indicate whether there are recommendations,
14 concerns, or needs related to the student's health and whether school
15 follow-up is needed.
16 (H) An opportunity to provide comments.
17 (6) Instructions to the health care provider specified in N.C.G.S. 130A-440(c) to
18 provide the student's current immunization record and any of the following
19 applicable school health forms:
20 (A) School medication authorization form.
21 (B) Diabetes care plan.
22 (C) Asthma action plan.
23 (D) Health care plans for any other condition for which the school needs to
24 be aware.
25 (7) A certification from a health care provider specified in N.C.G.S. 130A-440(c)
26 stating: "I certify that I performed, on the student named above, a health
27 assessment in accordance with N.C.G.S. 130A-440(b) that included a medical
28 history and physical examination with screening for vision and hearing and, if
29 appropriate, testing for anemia and tuberculosis. I certify that the information
30 on this form is accurate and complete to the best of my knowledge."
31 (8) The date the health assessment was conducted.
32 (9) The health care provider's name, signature, telephone and fax number, and the
33 name and address for the health care provider's practice.
34 (10) A section for the health care provider's stamp.

35 (b) The form will be maintained on file in the school once it has been submitted. A student's
36 official school record shall only reflect whether or not a health assessment transmittal form has
37 been received. The health assessment transmittal form shall be open to inspection only by
38 authorized school administrators, teachers, and other school personnel who require such access to
39 perform their assigned duties. These personnel shall maintain the confidentiality of the form.
40 Information contained on the health assessment transmittal form is confidential and is not a public
41 record within the meaning of N.C.G.S. 132-1. The school systems in Cherokee shall provide, upon
42 request of the Division of Public Health and Human Services, de-identified health assessment
43 information from the forms to the Director of Public Health.

44 (c) Within 60 calendar days after the commencement of a new school year, the principal
45 shall file a health assessment status report with the Division of Public Health and Human Services

1 on a form developed by the Division in consultation with the schools. The report shall document
2 the number of newly enrolled children in compliance and not in compliance with this Article.

3
4 **§ 130-3003. Religious exemption.**

5 If the bona fide religious beliefs of the parent, guardian or person in loco parentis of a child
6 are contrary to the health assessment requirements contained in this Article, this Article shall not
7 apply to the child. Upon submission of a written statement of the bona fide religious beliefs and
8 opposition to the health assessment requirements, the child may attend kindergarten without
9 submitting a health assessment report.

10
11 **Part 31.**

12 **Asbestos Hazard Management.**

13 **§ 130-3100. Assurance.**

14 For the purpose of promoting safe and healthful environments and having means for
15 enforcement of corrective measures required to minimize environmental health hazards, the
16 Division of Public Health and Human Services shall assure that asbestos hazard management is
17 provided as a service on tribal lands. Assurance shall be documented through agreements with
18 tribal programs, agents or local county departments of health. The Secretary of the Division of
19 Public Health and Human Services shall ensure that documentation of such agreements are on
20 record within the Division and remain current. The Secretary shall adopt rules under Ch. 150 to
21 provide due process and enforcement by the Division of the findings, orders, or other actions issued
22 or taken by tribal programs or agents or the local county department of health on behalf of the
23 Division.

24
25 **Part 32.**

26 **Lead-Based Paint Hazard Management Program.**

27 **§ 130-3200. Assurance.**

28 For the purpose of promoting safe and healthful environments and having means for
29 enforcement of corrective measures required to minimize environmental health hazards, the
30 Division of Public Health and Human Services shall assure that lead-based paint hazard is provided
31 as a service on tribal lands. Assurance shall be documented through agreements with tribal
32 programs, agents or local county departments of health. The Secretary of the Division of Public
33 Health and Human Services shall ensure that documentation of such agreements are on record
34 within the Division and remain current. The Secretary shall adopt rules under Chapter 150 to
35 provide due process and enforcement by the Division of the findings, orders, or other actions issued
36 or taken by tribal programs or agents or the local county department of health on behalf of the
37 Division.

38
39 **Part 33.**

40 **Advance Health Care Directive Registry.**

41 **§ 130-3300. North Carolina Advance Health Care Directive Registry.**

1 The State of North Carolina's statewide, on-line, central registry for advance health care
2 directives shall be the central registry for all advance health care directives that may be executed
3 by persons living on tribal lands.

4
5 **§ 130-3301. Validity of unregistered documents.**

6 Failure to register a document with the registry maintained by the Secretary of State pursuant
7 to North Carolina law shall not affect the document's validity. Failure to notify the Secretary of
8 State of the revocation of a document filed with the registry shall not affect the validity of a
9 revocation that meets the statutory requirements for the revocation to be valid.

10
11 **Part 34.**

12 **A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.**

13 **§ 130-3400. Suspected terrorist attack.**

14 (a) If the Secretary of the Division of Public Health and Human Services reasonably
15 suspects that a public health threat may exist and that the threat may have been caused by a terrorist
16 incident using nuclear, biological, or chemical agents, the Secretary is authorized to order any of
17 the following:

- 18 (1) Require any person or animal to submit to examinations and tests to determine
19 possible exposure to the nuclear, biological, or chemical agents.
- 20 (2) Test any real or personal property necessary to determine the presence of
21 nuclear, biological, or chemical agents.
- 22 (3) Evacuate or close any real property, including any building, structure, or land
23 when necessary to investigate suspected contamination of the property. The
24 period of closure during an investigation shall not exceed 10 calendar days. If
25 the Secretary determines that a longer period of closure is necessary to complete
26 the investigation, the Secretary may institute an action in superior court to order
27 the property to remain closed until the investigation is completed.
- 28 (4) Limit the freedom of movement or action of a person or animal that is
29 contaminated with, or reasonably suspected of being contaminated with, a
30 biological, chemical or nuclear agent that may be conveyed to other persons or
31 animals.
- 32 (5) Limit access by any person or animal to an area or facility that is housing
33 persons or animals whose movement or action has been limited under
34 subdivision (4) of this subsection or to an area or facility that is contaminated
35 with, or reasonably suspected of being contaminated with, a biological,
36 chemical or nuclear agent that may be conveyed to other persons or animals.
37 Nothing in this subdivision shall be construed to restrict the access of authorized
38 health care, law enforcement, or emergency medical services personnel to
39 quarantine or isolation premises as necessary in conducting their duties.

40 (b) The authority under subsection (a) of this section shall be exercised only when and so
41 long as a public health threat may exist, all other reasonable means for correcting the problem have
42 been exhausted, and no less restrictive alternative exists. Before applying the authority under
43 subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of
44 preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons,
45 the Secretary shall consult with the State Veterinarian in the Department of Agriculture and

1 Consumer Services and notify immediately the Secretary of the Division of Agriculture and
2 Natural Resources.

3 (c) The period of limited freedom of movement or access under subdivisions (4) and (5) of
4 subsection (a) of this section shall not exceed 30 calendar days. Any person substantially affected
5 by that limitation may institute, in Cherokee Court, an action to review the limitation. The
6 Secretary shall give the persons known by the Secretary to be substantially affected by the
7 limitation reasonable notice under the circumstances of the right to institute an action to review
8 the limitation. If a person or a person's representative requests a hearing, the hearing shall be held
9 within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person
10 substantially affected by that limitation is entitled to be represented by counsel of the person's own
11 choice or if the person is indigent, the person shall be represented by counsel appointed. The court
12 shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence,
13 that the limitation is reasonably necessary to prevent or limit the conveyance of biological,
14 chemical or nuclear agents to others, and may apply such conditions to the limitation as the court
15 deems reasonable and necessary.

16 (d) If the Secretary determines that a 30-calendar-day limitation on freedom of movement
17 or access is not adequate to protect the public health, the Secretary may institute an action to obtain
18 a court order extending the period limiting the freedom of movement or access. The court shall
19 continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable
20 and necessary, if it determines by the preponderance of the evidence, that additional limitation is
21 reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents
22 to others. The court order shall specify the period of time the limitation is to be continued and shall
23 provide for automatic termination of the order upon written determination by the Secretary that
24 the limitation on freedom of movement or access is no longer necessary to protect the public health.
25 In addition, where the petitioner can prove by a preponderance of the evidence that the limitation
26 on freedom of movement or access was not or is no longer needed for protection of the public
27 health, the person so limited may move the trial court to reconsider its order extending the
28 limitation on freedom of movement or access before the time for the order otherwise expires and
29 may seek immediate or expedited termination of the order. Before the expiration of an order issued
30 under this section, the Secretary may move to continue the order for additional periods not to
31 exceed 30 days each.

32 (e) If the Secretary reasonably suspects that there exists a public health threat that may
33 have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Secretary
34 shall notify the Principal Chief, the Secretary of the Division of Operations for Emergency
35 Management and the Chief of Police.

36 (f) For the purpose of this Article, the term "public health threat" means a situation that is
37 likely to cause an immediate risk to human life, an immediate risk of serious physical injury or
38 illness, or an immediate risk of serious adverse health effects.

39 (g) Nothing in this section shall limit any authority otherwise granted to Tribal or local
40 public health officials under this Chapter.

41 42 **§ 130-3401. Access to health information.**

43 (a) Notwithstanding any other provision of law, a health care provider, a person in charge
44 of a health care facility, or a unit of Tribal government shall report to the Secretary of Public Health
45 and Human Services any events that may indicate the existence of a case or outbreak of an illness,
46 condition, or health hazard that may have been caused by a terrorist incident using nuclear,

1 biological, or chemical agents. Events that may be reported include unusual types or numbers of
2 symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual
3 trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable,
4 a person who makes a report under this subsection shall not disclose personally identifiable
5 information. A person disclosing or not disclosing information pursuant to this subsection is
6 immune from any civil or criminal liability that might otherwise be incurred or imposed based on
7 the disclosure or lack of disclosure provided that the health care provider was acting in good faith
8 and without malice. In any proceeding involving liability, good faith and lack of malice are
9 presumed. Notwithstanding the foregoing, if a health care provider or unit of Tribal government
10 willfully does not disclose information pursuant to this subsection, the immunity from civil or
11 criminal liability provided under this subsection shall not be available if the person had actual
12 knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical
13 weapon of mass destruction as defined in N.C.G.S. 14-288.21(c).

14 (b) The Secretary of Public Health and Human Services may issue a temporary order
15 requiring health care providers to report symptoms, diseases, conditions, trends in use of health
16 care services, or other health-related information when necessary to conduct a public health
17 investigation or surveillance of an illness, condition, or health hazard that may have been caused
18 by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which
19 health care providers must report, what information is to be reported, and the period of time for
20 which reporting is required. The period of time for which reporting is required pursuant to a
21 temporary order shall not exceed 90 days. The Secretary may adopt rules to continue the reporting
22 requirement when necessary to protect the public health.

23 (c) Health care providers and persons in charge of health care facilities or laboratories
24 shall, upon request and proper identification, permit the Secretary of Public Health and Human
25 Services to examine, review, and obtain a copy of records containing confidential or protected
26 health information, or a summary of pertinent portions of those records, (i) that pertain to a report
27 authorized by subsection (a) or required by subsection (b) of this section, or (ii) that, in the opinion
28 of the Secretary, are necessary for an investigation of a case or outbreak of an illness, condition,
29 or health hazard that may have been caused by a terrorist incident using nuclear, biological, or
30 chemical agents.

31 (d) A person who makes a report pursuant to subsection (b) of this section or permits
32 examination, review, or copying of medical records pursuant to subsection (c) of this section is
33 immune from any civil or criminal liability that otherwise might be incurred or imposed as a result
34 of complying with those subsections.

35
36 (e) Confidential or protected health information received by the Secretary pursuant to this
37 section shall be confidential and shall not be released, except when the release is:

- 38 (1) Made pursuant to any other provision of law;
- 39 (2) To a federal, state, or local public health agency for the purpose of preventing
40 or controlling a public health threat; or
- 41 (3) To a court or law enforcement official or law enforcement officer for the
42 purpose of enforcing the provisions of this Chapter or for the purpose of
43 investigating a terrorist incident using nuclear, biological, or chemical agents.
44 A court or law enforcement official or law enforcement officer who receives
45 the information shall not disclose it further, except (i) when necessary to
46 conduct an investigation of a terrorist incident using nuclear, biological, or

chemical agents, or (ii) when the Secretary of Public Health and Human Services seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned.

§ 130-3402. Abatement of public health threat.

If it is determined that a public health threat may exist because of the contamination of property caused by a terrorist incident using nuclear, biological, or chemical agents, the Department of Public Health Director may order any action to abate that public health threat. To the extent that any owner, lessee, operator, or other person in control of the property is innocent of culpability in the creation of the public health threat, that person shall not be responsible for the costs of abating the public health threat.

§ 130-3403. Emergency department data reporting.

(a) To ensure the protection of the public health, the Cherokee Indian Hospital Authority (CIHA) shall participate in a syndromic surveillance system for NC hospital emergency departments in order to detect and investigate public health threats that may result from (i) a terrorist incident using nuclear, biological, or chemical agents or (ii) an epidemic or infectious, communicable, or other disease. The Secretary of Public Health and Human Services shall specify the data to be reported by CIHA pursuant to this program, subject to the following:

(1) CIHA shall submit electronically available emergency department data as specified by rule by PHHS. PHHS, in consultation with CIHA, shall establish by rule a schedule for the implementation of full electronic reporting capability of all required data elements. The schedule shall take into consideration the number of data elements already reported by the hospital, the hospital's capacity to electronically maintain the remaining elements, available funding, and other relevant factors.

(b) The following are not public records under Chapter 132 of the Cherokee Code and are privileged and confidential:

(1) Data reported to the Secretary pursuant to this section.

(2) Data collected or maintained by any entity with whom the Secretary contracts for the reporting, collection, or analysis of data pursuant to this section.

The Secretary shall maintain the confidentiality of the data reported pursuant to this section and shall ensure that adequate measures are taken to provide system security for all data and information. The Secretary may share data with local health departments and the Centers for

1 Disease Control and Prevention (CDC) for public health purposes. The Secretary shall not allow
2 information that it receives pursuant to this section to be used for commercial purposes and shall
3 not release data except as authorized by other provisions of law.

4 (c) A person is immune from liability for actions arising from the required submission of
5 data under this Part.

6
7 **§ 130-3405. Vaccination program assured.**

8 (a) The Division of Public Health and Human Services shall assure that a vaccination
9 program for first responders who may be exposed to infectious diseases when deployed to disaster
10 locations is a service provided on tribal lands. The vaccinations shall include, but are not limited
11 to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza
12 vaccination, pneumococcal vaccination, and immune globulin when recommended by the United
13 States Public Health Service and in accordance with Federal Emergency Management Directors
14 Policy.

15 (b) Participation in the vaccination program is voluntary by the first responders, except for
16 first responders who are classified as having "occupational exposure" to bloodborne pathogens as
17 defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. §
18 1910.10300 who shall be required to take the designated vaccinations or otherwise required by
19 law.

20 (c) Nothing in this section shall require first responders, except first responders for whom
21 the vaccination program is not voluntary as set forth in subsection (b) of this section, who present
22 a written statement from a licensed physician indicating that a vaccine is medically contraindicated
23 for the first responder or who sign a written statement that the administration of a vaccination
24 conflicts with the first responder's religious tenets, to receive a vaccine.

25 (d) The Division shall notify first responders of the availability of the vaccination program
26 and shall provide educational materials on ways to prevent exposure to infectious diseases.

27 (e) As used in this section, unless the context clearly requires otherwise, the term:

28 (1) "Bioterrorism" means the intentional use of any microorganism, virus,
29 infectious substance, biological product, or biological agent as defined in
30 N.C.G.S. 130A-479 that may be engineered as a result of biotechnology or any
31 naturally occurring or bioengineered component of any microorganism, virus,
32 infectious substance, or biological product to cause or attempt to cause death,
33 disease, or other biological malfunction in any living organism.

34 (2) "Disaster location" means any geographical location where a bioterrorism
35 attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.

36 (3) "First responders" means tribal law enforcement personnel, fire department
37 personnel, and emergency medical personnel who will be deployed to
38 bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or
39 emergencies.

40 **Part 35.**

41 **Smoking Prohibitions.**

42 **§ 130-3500 Policy.**

43
44 The Eastern Band of Cherokee Indians recognizes the cultural importance of the traditional
45 use of tobacco for ceremonial purposes. No part of this Part applies to Traditional use of tobacco
46 that is guided by a traditional healer. The Eastern Band of Cherokee Indians also recognizes the