

NORTH CAROLINA



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
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16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/31/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
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16:08	10/15/01	09/24/01	12/17/01	10/30/01	11/14/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	12/17/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	01/02/02	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

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 RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

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
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the 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.

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.

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS

Public notice of intent to issue or reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges of Wastewater associated with the following activities:

NPDES General Permit No. NCG510000 for treated wastewater from the remediation of groundwater contamination resulting from gasoline, kerosene, diesel, fuel oil or jet fuel.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permit for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permit and Fact Sheet concerning the draft Permit are available by writing or calling:

Delonda Alexander
Water Quality Section
N.C. Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Telephone (919) 733-5083 ext. 584

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than August 15, 2001. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Number, NCG510000

Date: June 20, 2001

(signed) Bradley Bennett
(for) Kerr T. Stevens, Director

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS

Public notice of intent to issue or reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges of Stormwater associated with the following activities:

NPDES General Permit No. NCG010000 for stormwater point source discharges associated with construction activities including clearing, grading and excavation activities resulting in the disturbance of land.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permit for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permit and Fact Sheet concerning the draft Permit are available by writing or calling:

William C. Mills, PE
Water Quality Section
N.C. Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Telephone (919) 733-5083 ext. 548

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than August 16, 2001. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Number, NCG010000

Date: July 16, 2001

(signed) *Bradley Bennett*
(for) Kerr T. Stevens, Director
Division of Water Quality

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

FHO Partners, LLC

Pursuant to N.C.G.S. § 130A-310.34, FHO Partners, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Oxford, Granville County, North Carolina. The Property consists of 4.9152 acres and is located at 8 Industry Drive. Environmental contamination exists on the Property in soil and groundwater. FHO Partners, LLC has committed itself to redevelop the Property as a manufacturing/distribution facility. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and FHO Partners, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Oxford at 300 Williamsboro Street in that city by contacting Cheryl Hart, (919) 603-1110, P. O. Box 1307, Oxford, NC 27565; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public hearing may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, and/or requests to view the full Notice of Intent, should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environmental and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 19 – SERVICES FOR THE BLIND

Notice of Rule-making Proceedings is hereby given by Commission for the Blind in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 19. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 111-28

Statement of the Subject Matter: To adopt, amend, or repeal rules to conform to changes in the federal regulations, update references and terminology, and update rules to current practices.

Reason for Proposed Action: To adopt, amend, or repeal rules to conform to changes in 34 C.F.R. 361.53, 54, 57, 48, 5, 42, 52. To review rules that are affected by budget shortfalls. To review rules for compliance with federal regulations, statutory requirements, and current practices.

Comment Procedures: Written comments should be mailed to: E. Ann Christian, P.O. Box 2455, Raleigh, NC 27602.

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

Notice of Rule-making Proceedings is hereby given by NC Criminal Justice Education & Training Standards Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 12 NCAC 09B .0102, .0203, .0205, .0215, .0233, 09D .0102, .0104, .0105, .0204 - .0205. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 17C-6; 17C-10

Statement of the Subject Matter: Amendment that Background Investigation Form must be used. Amendment of requirement for admission to Instructor Training Course. Amendment to rename a topic in BLET. Amendment to delete reference to certain testing in Supplemental SMI Training. Amendment increasing hours for Specialized Physical Fitness Instructor required training. Amendments to the Professional Certificate Program such that all Advanced Law Enforcement Certificates will be the same. Amendment to clarify that educational credits for the Professional Certificate Program must be issued by specifically recognized institutions of higher education.

Reason for Proposed Action: The NC Criminal Justice Education & Training Standards Commission has authorized rule-making authority to amend numerous administrative rules in order to better define the minimum employment and training standards that regulate the criminal justice officer profession in the State, and to simplify and clarify requirements of the Professional Certificate Program.

Comment Procedures: Written comments should be directed to Elizabeth L. Thompson, Criminal Justice Standards Division, Room G-27, Old Education Building, 114 West Edenton Street, P.O. Drawer 149, Raleigh, North Carolina 27602.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by the North Carolina Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10F; 10I; 10K - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-3; 75A-15; 113-134; 113-270.1A; 113-291.2; 113-292; 113-333

Statement of the Subject Matter:
15A NCAC 10F – No Wake Zone
15A NCAC 10I – Special Concern Species List
15A NCAC 10K – Hunter Safety Course

RULE-MAKING PROCEEDINGS

Reason for Proposed Action:

15A NCAC 10F – Local government is petitioning agency to start rulemaking

15A NCAC 10I – To set/amend regulations necessary to manage and conserve wildlife resources in the State of North Carolina

15A NCAC 10K – To set/amend regulations affecting the Hunter Safety Program as necessary to fulfill requirements of G.S. 113-270.1A, which requires the Wildlife Resources Commission to institute and coordinate a statewide course of instruction in

hunter ethics, wildlife laws and regulations and competency and safety in the handling of firearms.

Comment Procedures: The record will be open for receipt of written comments and must be delivered or mailed to the North Carolina Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHHS – Division of Medical Assistance intends to amend the rule cited as 10 NCAC 50B .0101; .0311; .0403; and .0408. Notice of Rule-making Proceedings was published in the Register on October 2, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: July 31, 2001

Time: 1:00 pm

Location: 1985 Umstead Drive, Room 132, Kirby Bldg., Raleigh, NC

Reason for Proposed Action:

10 NCAC 50B .0101 and .0408 - Federal welfare reform legislation changed the definition of mandatory coverage groups for Family and children's related cases. AFDC/Work First recipients are no longer required to be automatically eligible for Medicaid. Coverage is mandatory for individuals who would have been eligible under rules in place July 16, 1996.

10 NCAC .0311 and .0403 – Methodologies for determining countable resources for both categorically and medically needy family and children's related cases are changed. The new methodologies conform to Work First to maintain the link between Work First and Medicaid.

Comment Procedures: *Written comments concerning this rule-making action must be submitted by August 16, 2001 to Portia W. Rochelle, Rule-making coordinator, Division of Medical Assistance, 1985 Umstead Drive, 2504 Mail Service, Raleigh, NC 27699-2504.*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 50 – MEDICAL ASSISTANCE

SUBCHAPTER 50B – ELIGIBILITY DETERMINATION

SECTION .0100 – COVERAGE GROUPS

10 NCAC 50B .0101 MANDATORY

The following groups required by 42 U.S.C. 1396a (a)(10) or 1396u-1 shall be eligible for Medicaid:

- (1) ~~Recipients receiving AFDC. Individuals who meet the requirements under 42 U.S.C. 1396u-1;~~
- (2) ~~Deemed recipients of AFDC including: The following individuals who meet the requirements in Item (1) of this Rule but who do not receive a cash payment:~~
 - (a) Individuals denied AFDC solely because the payment amount would be less than ten dollars (\$10.00).
 - ~~(b) Participants in AFDC work supplementation programs approved in the AFDC State Plan,~~
 - ~~(b)(e) Individuals deemed to be AFDC recipients for receiving four months following termination of AFDC due continued Medicaid when eligibility under 42 U.S.C. 1396u-1 is lost due~~ to collection or increased collection of child support,
 - ~~(c)(d) Individuals receiving transitional Medicaid as described in 42 U.S.C. 1396s when AFDC-eligibility under 42 U.S.C. 1396u-1 is lost due to~~ increased earnings,
 - ~~(d)(e) Individuals for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under Title IV E of the Social Security Act as described at 42 U.S.C. 673 (b).~~
- (3) Qualified pregnant women as defined at 42 U.S.C. 1396d(n)(1).
- (4) Qualified children as defined at 42 U.S.C. 1396d(n)(2).
- (5) Pregnant women, during a 60 day period following termination of the pregnancy, for pregnancy related and post partum services if they applied for Medicaid prior to termination of the pregnancy and were eligible on the date pregnancy is terminated.
- (6) Children, born to a woman who was eligible for and receiving Medicaid on the date of the child's birth, for up to one year from the date of birth; as described at 42 U.S.C. 1396a(e)(4).
- (7) Individuals receiving SSI under Title XVI of the Social Security Act.
- (8) Individuals who meet the requirements under 42 U.S.C. 1382h(a) or (b)(1).
- (9) Blind or disabled individuals who were eligible in December 1973 as blind or disabled and who for each consecutive

- (10) month since December 1973 continue to meet December 1973 eligibility criteria. Individuals who were eligible in December 1973 as aged, or blind, or disabled with an essential spouse and who, for each consecutive month since December 1973, continue to live with the essential spouse and meet December 1973 eligibility criteria.
- (11) Individuals who in December 1973 were eligible as the essential spouse of an aged, or blind, or disabled individual and who for each consecutive month since December 1973, have continued to live with that individual who has met December 1973 eligibility criteria.
- (12) Qualified Medicare Beneficiaries described at 42 U.S.C. 1396d(p).
- (13) Pregnant women whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2), for pregnancy related services including labor and delivery.
- (14) Children born after September 30, 1983 and who are under age 19 who are described at 42 U.S.C. 1396a(1).
- (15) Qualified Disabled and Working Individuals described at 42 U.S.C. 1396d(s).
- (16) Individuals as described at 42 U.S.C. 1396a(a)(10)(E)(iii).
- (17) Individuals who would continue to be eligible for SSI except for specific Title II benefits or cost-of-living adjustments as described at 42 U.S.C. 1383c.

Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.

10 NCAC 50B .0311 RESERVE

North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group is determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Items (4) and (5) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the

- resource and he, or someone acting in his behalf, can take any necessary action to make it available.
- (a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:
 - (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
 - (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.
- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.
- (c) When a Medicaid application is filed on behalf of an individual who:
 - (i) is alleged to be mentally incompetent,
 - (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
 - (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be

instructed to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence which has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Sub-item (1)(f) of this Rule, the resources shall be excluded beginning with the date that such evidence indicates that he became incompetent, except as provided in Sub-items (1)(d) or (1)(e) of this Rule.

- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.
- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence specified in Sub-item (1)(f) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his death. Any such showing of incompetence

is subject to rebuttal by competent evidence as specified in Sub-item (1)(f) of this Rule.

- (f) For purposes of this Rule, competent evidence is limited to the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the condition of the individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and if no longer incompetent, when the individual recovered competence.
- (2) The limitation of resources held for reserve for the budget unit shall be as follows:
 - (a) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000.00) per budget unit;
 - ~~(b) For Family and Children's related medically needy cases, one thousand five hundred dollars (\$1500.00) for a budget unit of one person, two thousand two hundred fifty dollars (\$2,250.00) for a budget unit of two persons and increases of one hundred dollars (\$100.00) for each additional person in the budget unit over two, not to exceed a total of three thousand, fifty dollars (\$3,050.00);~~
 - ~~(c)~~ (b) for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and three thousand dollars (\$3000.00) for a budget unit of two.
- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
 - (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
 - (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.

PROPOSED RULES

(4) Resources counted in the determination of financial eligibility for categorically needy aged, blind and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (a) The value of personal effects and household goods are not counted.
(b) Value of tenancy in common interest in real property is not counted.
(c) Value of life estate interest in real property is not counted.
(d) Value of burial plots are not counted.
(e) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) is not counted.

(5) Resources counted in the determination of financial eligibility for medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (a) The value of personal effects and household goods are not counted.
(b) Personal property is not a countable resource if it:
(i) is used in a trade or a business; or
(ii) is used to produce goods and services for personal use; or
(iii) produces a net annual income.
(c) Real property not exempted under homesite rules is not a countable resource if it:
(i) is used in a trade or business; or
(ii) is used to produce goods and services for personal use; or
(iii) is non-business income producing property that produces net annual income after operational expenses of at least six percent of equity value per methodologies under Title XVI of the Social Security Act. For purposes of this Sub-item equity of agricultural land,

horticultural land, and forestland is the present use value of the land, as defined by G.S. 105-277.1A. et seq., less the amount of debts, liens or other encumbrances.

- (d) Value of tenancy in common interest in real property is not counted.
(e) Value of life estate interest in real property is not counted.
(f) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
(g) Value of burial plots are not counted.
(h) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) is not counted.

(6) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:

- (a) Cash on hand;
(b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
(c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
(d) The portion of lump sum payments remaining after the month of receipt;
(e) Cash value of life insurance policies owned by the budget unit;
(f) ~~Revocable trust funds;~~
(g)(f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
(h) ~~Negotiable and salable promissory notes and loans;~~
(i) ~~Revocable pre-paid burial contracts;~~
(j)(g) Patient accounts in long term care facilities;
(k) ~~Individual Retirement Accounts or other retirement accounts or plans;~~
(l)(h) Equity in non-essential personal property limited to:
(i) Mobile homes not used as home,
(ii) Boats, boat trailers and boat motors,

- (iii) Campers,
 - (iv) Farm and business equipment;
 - (v) Equity in vehicles in excess of one thousand five hundred dollars (\$1,500.00) in one motor vehicle per adult; determined to be essential under Rule .0403 of this Subchapter;
 - ~~(vi) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;~~
 - ~~(m) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:~~
 - ~~(i) Fee simple interest,~~
 - ~~(ii) Tenancy by the entirety interest only;~~
 - ~~(iii) Salable remainder interest,~~
 - ~~(iv) Value of burial plots;~~
- (7) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
- (a) Cash on hand;
 - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
 - (c) The balance of checking accounts less the ~~currently current~~ monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
 - ~~(e) Trust funds;~~
 - ~~(f)(e)~~ Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - ~~(g) Negotiable and salable promissory notes and loans;~~
 - ~~(h) Revocable prepaid burial contracts;~~
 - ~~(i)(f)~~ Patient accounts in long term care facilities;
 - ~~(j) Individual Retirement Accounts or other retirement accounts or plans;~~
 - ~~(k)(g)~~ Equity in non-essential, non-income producing personal property limited to:
 - (i) Mobile home not used as home,

- (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment,
 - (v) Equity in motor vehicles ~~determined to be non-essential under Rule .0403 of this Subchapter; in excess of one vehicle per adult if not income-producing.~~
- ~~(4) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to;~~
- ~~(i) Fee simple interest;~~
 - ~~(ii) Tenancy by the entirety interest only;~~
 - ~~(iii) Salable remainder interest;~~
 - ~~(iv) Value of burial plots.~~

Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.

10 NCAC 50B .0403 RESERVE

- (a) The value of resources held by the client or by a financially responsible person shall be considered available to the client in determining countable reserve for the budget unit.
- (b) Jointly owned resources shall be counted as follows:
 - (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;
 - (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;
 - (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.
- (c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding

order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph (n) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets are based on standards and methodology in Title XVI of the Social Security Act except as specified in Items (4) and (5) in Rule .0311 of this Subchapter.

(e) Countable resources for Family and Children's related cases shall be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.

(f) ~~The homesite Real property~~ shall be excluded from countable resources for Family and Children's related cases, as follows:

- ~~(1) The homesite is the client's principal place of residence, which includes the house and in the city the lot on which the house sits and all the buildings on the lot, or in a rural area the land on which the house sits, up to one acre, and all buildings on the acre, and the homesite also includes up to twelve thousand dollars (\$12,000.00) tax value in real property contiguous to the principal place of residence, regardless of whether the principal place of residence is owned by the client.~~
- ~~(2) Additional value in real property contiguous to the principal place of residence shall be a countable resource.~~

~~(g) For medically needy Families and Children cases if the client or any member of the budget unit has ownership in a probated estate, the value of the individual's proportionate share of the countable property shall be a countable resource unless the property can be excluded as the homesite or as income producing property, as stated in Paragraphs (e) and (f) of this Rule.~~

~~(h) For family and children's related cases the equity in non-excluded real property shall be counted toward the reserve level of the budget unit.~~

~~(i)(g) A One motor vehicle per adult shall be determined an essential vehicle excluded for medically needy Family and Children's related cases, when it must be specially equipped for~~

~~use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment.~~

~~(h) For medically needy family and children's related cases, income producing vehicles and personal property shall be excluded from countable resources.~~

~~(i)(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.~~

~~(k) For family and children's related cases the current market value of a remainder interest in life estate shall be determined by applying the remainder interest percentage from G.S. 846 and 847 to the tax value of the property. A lower current market value for remainder interest may be established by offering the interest for sale and the highest offer received, if any, is less than the value determined by application of the values chart to the tax value.~~

~~(j)(j) For a married individual:~~

- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under this Section must be considered when determining his or her countable reserve.

- (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (m) of this Rule.

~~(m)(k) For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:~~

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or
- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

Authority G.S. 108A-54; 108A-55; S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981).

10 NCAC 50B .0408 CLASSIFICATION

(a) The following individuals shall be classified as categorically needy:

- (1) Individuals ~~who receive cash payments under programs of public assistance; described in Item (1) of Rule .0101 of this Subchapter.~~
- (2) Deemed recipients of SSI described in Item (17) of Rule .0101 of this Subchapter; and individuals who are eligible for public assistance cash payments but who choose not to apply for cash payments;
- (3) ~~Individuals Deemed recipients of AFDC~~ described in Sub-item (2)(b) of Rule .0101 of this Subchapter;
- (4) Pregnant women described in:
 - (A) Item (3) or (13) of Rule .0101 of this Subchapter; or
 - (B) Sub-item (1)(d) of Rule .0102 of this Subchapter.
- (5) Individuals under 21 described in:
 - (A) Item (4) or (14) of Rule .0101 of this Subchapter;
 - (B) Sub-item (1)(a) of Rule .0102 of this Subchapter; or
 - (C) Sub-item (1)(d) of Rule .0102 of this Subchapter who meet the eligibility requirements for categorically needy in this Subchapter.
- (6) Qualified Medicare Beneficiaries described in Item (1) of Rule .0101 of this Subchapter;
- (7) Individuals described in Item (9), (10) or (11) of Rule .0101 of this Subchapter who were receiving cash assistance payments in December 1973;
- (8) Individuals described in Item (5) of Rule .0101 of this Subchapter who were classified categorically needy when pregnancy terminated;
- (9) Individuals described in Item (6) of Rule .0101 of this Subchapter whose mother is classified as categorically needy;
- (10) Individuals described in Sub-item (1)(c) of Rule .0102 of this Subchapter; or
- (11) Individuals described in Sub-item (1)(d) of Rule .0102 of this Subchapter.

(b) The following individuals who are not eligible as categorically needy and meet the requirements for medically needy set forth in this Subchapter shall be classified medically needy:

- (1) Pregnant women described in:
 - (A) Item (5) of Rule .0101 of this Subchapter who were classified medically needy when their pregnancy terminated; or
 - (B) Sub-item (4)(b) of Rule .0102 of this Subchapter;
- (2) Individuals under age 21;

- (3) Caretaker relatives of eligible dependent children; or
- (4) Aged, blind or disabled individuals not eligible for a public assistance cash payment.

Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Criminal Justice Education & Training Standards Commission intends to adopt the rules cited as 12 NCAC 09G .0101-.0103; .0201-.0206; .0301-.0316; .0401-.0416; .0501-.0506; .0601-.0606; .0701, amend the rules cited as 12 NCAC 09A .0103; 09B .0304; 09C .0205; .0207-.0208, and repeal the rules cited as 12 NCAC 09B .0107; .0109-.0110; .0112-.0113; .0115; .0206; .0208; .0216; .0223 and .0229-.0231. Notice of Rule-making Proceedings was published in the Register on December 15, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 16, 2001

Time: 10:00 a.m.

Location: North Carolina Justice Academy, Edneyville, NC

Reason for Proposed Action: Legislative mandate – S.L. 1999-237, s. 18.14

Comment Procedures: *Written comments should be directed to Elizabeth L. Thompson, Criminal Justice Standards Division, Room G-27, Old Education Bldg, 114 W. Edenton St., PO Drawer 149, Raleigh, NC 27602-0149. Comments will be accepted through August 16, 2001.*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 – COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout ~~this Chapter~~Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

PROPOSED RULES

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- ~~(6) "Correctional Officer" means any employee of the North Carolina Department of Correction who is responsible for the custody or treatment of inmates.~~
- ~~(7)(6) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and further includes excluding Correctional officers, probation and parole intake officers; Probation/parole officers, and Probation/parole officers-surveillance probation/parole officers surveillance; probation/parole intensive officers; and, state parole case analysts.~~
- ~~(8)(7) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.~~
- ~~(9) "Criminal Justice Training Points" means points earned toward the Criminal Justice Officers' Professional Certificate Program by successful completion of commission approved criminal justice training courses. Twenty classroom hours of commission approved criminal justice training equals one criminal justice training point.~~
- ~~(10)(8) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also~~

includes a designee formally appointed in writing by the Department head.

~~(11)(9)~~ "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.

~~(12)~~(10) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

~~(13)~~(11) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a Commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:

- (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
- (b) for Youth Services Department of Juvenile Justice and Delinquency Prevention and Department of Correction personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.

~~(14)~~(12) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

~~(15)~~(13) "In-Service Training" means any and all training prescribed in Subchapter 09E Rule .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.

~~(16)~~(14) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.

~~(17)~~(15) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads: As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice. I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

~~(17)~~(16) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are

governed by the provisions of Chapter 17E of the General Statutes.

~~(19)~~(17) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.

~~(20)~~(18) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.

~~(21)~~(19) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

~~(22)~~(20) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

- (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item ~~(22)~~(b) ~~(20)~~(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically

excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(l)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later

amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, ~~and~~ driving while license permanently revoked or permanently ~~suspended-suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic~~

offenses specifically listed in the Class B Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

~~(23)~~ "Parole Case Analyst" means an employee of the North Carolina Department of Correction who works under the supervision of the North Carolina Parole Commission, whose duties include analyzing and processing cases under consideration for parole, preparing and presenting parole recommendations, analyzing and processing executive clemency matters and interviewing inmates.

~~(24)~~(21) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 09C .0404.

~~(25)~~ "Probation/Parole Officer" means an employee of the Division of Adult Probation and Parole whose duties include supervising, evaluating, treating, or instructing offenders placed on probation or parole or assigned to any other community-based program operated by the Division of Adult Probation and Parole.

~~(26)~~ "Probation/Parole Intake Officer" means an employee of the Division of Adult Probation and Parole, other than a regular Probation/Parole officer, whose duties include conducting, preparing, or delivering investigations, reports, and recommendations, either before or after sentencing, upon the request or referral of the court, the Parole Commission, or the Director of the Division of Adult Probation and Parole.

~~(27)~~ "Probation/Parole Intensive Officer" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole officer, probation/parole intake officer, and probation/parole

~~officer surveillance who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole, whose duties include supervising, investigating, reporting, counseling, treating, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who serves as the lead officer in such a unit.~~

~~(28)~~ "Probation/Parole Officer Surveillance" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole and a probation/parole intake officer who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who is trained in community corrections and law enforcement techniques.

~~(29)~~(22) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.

~~(30)~~(23) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band and either of which operates in the stationary and/or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.

~~(31)~~(24) "Resident" means any youth committed to a facility operated by the North Carolina Division of Youth Services Department of Juvenile Justice and Delinquency Prevention.

~~(32)~~(25) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, ~~penal, correctional,~~ or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal

justice training course curriculum, instructors, and facilities.

~~(33)~~(26) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.

~~(34)~~(27) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.

~~(35)~~(28) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.

~~(36)~~(29) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

~~(37)~~(30) "State Youth Services Officer" means an employee of the North Carolina Division of Youth Services Department of Juvenile Justice and Delinquency Prevention whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.

Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

SUBCHAPTER 09B – STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0107 MINIMUM STANDARDS FOR CORRECTIONAL OFFICERS

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 09B .0101 of this Section, every correctional officer employed by an agency in North Carolina shall: be a high school graduate or have passed the General Education Development test indicating high school equivalency.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency. Note: Although not presently required by these Rules, the Commission recommends that on the date of employment or within 24 months thereafter, every candidate employed as a correctional officer have no less than six semester units or nine quarter units of~~

~~educational credit at an accredited institution of higher education.~~

Authority G.S. 17C-6.

12 NCAC 09B .0109 MINIMUM STANDARDS FOR PROBATION/PAROLE OFFICERS

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 19B .0101 of this Section, every probation/parole officer employed by an agency in North Carolina shall: be a graduate of an accredited college or university and have attained at least the baccalaureate degree.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) be a graduate of an accredited college or university, which is accepted by the American Council on Education (ACE) for the Commission on Recognition of Postsecondary Accreditation (CORPA) as accredited, and have attained at least the baccalaureate degree.~~

Authority G.S. 17C-6.

12 NCAC 09B .0110 MINIMUM STANDARDS FOR PROBATION/PAROLE INTAKE OFFICERS

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 09B .0101 of this Section, every probation/parole intake officer shall have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university, which is accepted by the American Council on Education (ACE) for the Commission on Recognition of Postsecondary Accreditation (CORPA) as accredited.~~

Authority G.S. 17C-6.

12 NCAC 09B .0112 MINIMUM STANDARDS FOR PAROLE CASEANALYSTS

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 09B .0101 of this Section, every parole case analyst employed by an agency in North Carolina shall be a graduate of an accredited college or university and have attained at least the baccalaureate degree.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) be a graduate of an accredited college or university, which is accepted by the~~

~~American Council on Education (ACE) for the Commission on Recognition of Postsecondary Accreditation (CORPA) as accredited, and have attained at least the baccalaureate degree.~~

Authority G.S. 17C-6.

12 NCAC 09B .0115 MINIMUM STANDARDS PROBATION/PAROLE INTENSIVE OFFICER

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 09B .0101 of this Section, every probation/parole intensive officer employed by an agency in North Carolina shall be a graduate of an accredited college or university and have attained at least the baccalaureate degree.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) be a graduate of an accredited college or university, which is accepted by the American Council on Education (ACE) for the Commission on Recognition of Postsecondary Accreditation (CORPA) as accredited, and have attained at least the baccalaureate degree.~~

Authority G.S. 17C-6.

12 NCAC 09B .0113 MINIMUM STANDARDS PROBATION/PAROLE OFFICERS-SURVEILLANCE

~~In addition to the requirements for criminal justice officers contained in 12 NCAC 09B .0101 of this Section, every probation/parole officer surveillance shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.~~

- ~~(1) not have committed or been convicted of a felony; and~~
- ~~(2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.~~

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0206 BASIC TRAINING - CORRECTIONAL OFFICERS

~~(a) The basic training course for correctional officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a correctional officer.~~

~~(b) Each basic training course for correctional officers shall include the following identified topic areas and minimum instructional hours for each area:~~

(1) The Division of Prisons Employee	2 Hours
(2) Prison Security Functions and Procedures	4 Hours
(3) Contraband and Techniques of Search	8 Hours
(4) Inmate Supervision	8 Hours
(5) Firearms	24 Hours
(6) Inmate Classification Process and Programs	4 Hours
(7) Understanding Inmate Behavior	12 Hours
(8) Prison Emergency Operations	18 Hours
(9) Radio Communications, Transporting, and Restraints	4 Hours
(10) Basic Life Support	12 Hours
(11) Prison Health Services	2 Hours
(12) Report Writing	6 Hours
(13) You and the Law	4 Hours
(14) Interpersonal Communication Skills	16 Hours
(15) Unarmed Self Defense	18 Hours
(16) Role of the Correctional Witness	4 Hours
(17) Disciplinary and Inmate Grievance Procedures	4 Hours
(18) Administrative Matters, Review and Testing	10 Hours

~~Total 160 Hours~~

~~(c) The "Basic Correction Officer Training Manual" as published by the Department of Correction is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6, shall be used as the basic curriculum for delivery of correctional officer basic training courses. Copies of this publication may be inspected at the office of the agency:~~

~~The Office of Staff Development and Training
North Carolina Department of Correction
1001 Mountford Avenue
Raleigh, North Carolina 27626-0540~~

~~and may be obtained from the Department of Correction for fifty dollars (\$50.00) per copy.~~

PROPOSED RULES

~~(d) Commission accredited schools that are accredited to offer the "Basic Training: Correctional Officers" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.~~

~~(e) Upon successful completion of a commission accredited training course by correctional trainees, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion referenced in 12 NCAC 09C .0213.~~

Authority G.S. 17C-6; 17C-10.

12 NCAC 09B .0208 BASIC TRAINING - PROBATION/PAROLE OFFICERS

~~(a) The basic training course for Probation/Parole Officers and Intake Officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole or intake officer.~~

~~(b) Each basic training course for Probation/Parole Officers and Intake Officers shall include training in the following identified topical areas:~~

(1)	Orientation to DAPP Organization, Policy, and Procedure	12
	Hours	
(2)	Legal Considerations for the Probation/Parole Officer	20
	Hours	
	to include as a minimum the following subject areas:	
	(A) Introduction to the Legal System	
	(B) Legalities of Pre-sentence & Pre-diagnostic Investigations	
	(C) Probation Law	
	(D) Parole Law	
(3)	Officer Probationer/Parolee Relations	28
	Hours	
	to include as a minimum the following subject areas:	
	(A) Understanding Probationer/Parolee Behavior	
	(B) Counseling Methodologies	
	(C) Crisis Intervention and Domestic Disputes	
	(D) Counseling Substance Abuse Cases	
	(E) Interview Techniques	
	(F) Probationer/Parolee Supervision	
(4)	Administrative and Probationer/Parolee Management	32
	Hours	
	to include as a minimum the following subject areas:	
	(A) Case Management	
	(B) Processing New Parole Cases	
	(C) Parole Violations and Revocations	
	(D) Community Resources Management	
	(E) Processing Probation Cases	
(5)	Defensive Protection	30
	Hours	
	to include as a minimum the following subject areas:	
	(A) Arrest Procedures	
	(B) Unarmed Self-Defense	
	(C) Personal Protection	
(6)	Courtroom Preparation and Demeanor	8
	to include as a minimum the following subject areas:	
	Hours	
	(A) Public Speaking	
	(B) Role of the Probation/Parole Witness	
	(C) Moot Court	
(7)	Drug Identification	4
	Hours	
(8)	Basic Life Support	8
	Hours	
(9)	Physical Fitness Education	12
	Hours	
(10)	Administrative Matters, Review, and Testing	6
	Hours	
		TOTAL 160 Hours

Authority G.S. 17C-6; 17C-10.

12 NCAC 09B .0216 BASIC TRAINING - PAROLE CASE ANALYSTS

~~(a) The basic training course for Parole Case Analysts shall consist of a minimum of 206 hours of specialized instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a parole case analyst.~~

~~(b) Each basic training course for Parole Case Analysts shall include training in the following identified topical areas; however, the director is authorized to permit modification of the topical areas and minimum instructional hours, not inconsistent with a minimum of 206 hours of instruction, on an interim basis with such modifications to be submitted to the Standards Committee and the full commission at their next regularly scheduled meeting:~~

(1)	Introduction: The Parole Case Analyst Hours	44
(2)	Parole Analytical Process: File Development Hours	16
(3)	Parole Analytical Process: Initial Review Hours	55
(4)	Parole Analytical Process: Pre-Parole Field Investigation Hours	16
(5)	Parole Analytical Process: Parole Case Analyst Recommendation Hours	47
(6)	Special Programs Hours	8
(7)	Processing Executive Clemency Cases Hours	2
(8)	The Division of Adult Probation and Parole Hours	18

Authority G.S. 17C-6.

12 NCAC 09B .0223 BASIC TRAINING - PROBATION/PAROLE OFFICERS -SURVEILLANCE

~~In addition to the requirements for Basic Training for Probation/Parole Officers and Intake Officers contained in 12 NCAC 09B .0208 of this Section, every Probation/Parole Officer-Surveillance shall complete a supplemental training course which shall include training in the following identified topical areas and minimum instructional hours for each area:~~

(1)	Orientation to Intensive Operational Procedures	2 Hours
(2)	Firearms	30 Hours
(3)	Advanced Defensive Protection	22 Hours
	to include as a minimum the following subject areas:	
	(a) Defensive Tactics	
	(b) Defensive Techniques with Flashlight	
	(c) Disarming and Weapons Retention	
	(d) Defensive Application of Chemical Aerosols	
(4)	Officer/Probationer/Parolee Relations	12 Hours
	to include as a minimum the following subject areas:	
	(a) Interpersonal Communications	
	(b) Summary of Drug Use and Abuse	
	(c) Interview/Investigation/Surveillance	
(5)	Advanced Arrest, Search and Seizure	8 Hours
(6)	DAPP Specialized Equipment Operations	4 Hours
(7)	Administrative Matters, Review, and Testing	4 Hours
	Total	82 Hours

Authority G.S. 17C-6.

12 NCAC 09B .0229 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING – FIREARMS

~~(a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.~~

~~(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer-Surveillance" course, "Basic Training-Probation/Parole Intensive Officer" course, and advanced (in-service) training courses for correctional officers, extradition officers, PERT teams, and intensive supervision and surveillance probation and parole officers.~~

~~(c) Each corrections specialized firearms instructor training course shall include as a minimum the following identified topical areas and minimum instructional hours for each area:~~

(1) Overview	3 Hours
(2) Legal Considerations for Firearms Instructors	4 Hours
(3) Firearms Safety	2 Hours
(4) Range Operations	2 hours
(5) Range Medical Emergencies	2 Hours
(6) Revolver Operation, Use and Maintenance	12 Hours
(7) Advanced Revolver Training	6 Hours
(8) Revolver Night Firing	4 Hours
(9) Rifle Training and Qualification	8 Hours
(10) Shotgun Training and Qualification	5 1/2 Hours
(11) Maintenance and Repair of Rifles and Shotguns	2 Hours
(12) Special Techniques, Training Aids and Methods	3 Hours
(13) Chemical Weapons	8 Hours
(14) Situational Use of Firearms	10 1/2 Hours
(15) Day and Night Practical Courses of Fire	6 Hours
(16) Administrative Matters, Testing, and Evaluation	2 Hours

~~(d) Commission accredited schools that are accredited to offer the "Corrections Specialized Instructor Training – Firearms" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.~~

Authority G.S. 17C-6.

12 NCAC 09B .0230 CORRECTIONS SPECIALIZED INSTRUCTOR TRA – UNARMED SELF-DEF

~~(a) The instructor training course requirement for corrections specialized unarmed self defense instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.~~

~~(b) Each corrections specialized unarmed self defense instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice unarmed self defense instructor in the "Basic Training – Correctional Officer" course, "Basic Training – Probation/Parole Officer Surveillance" course, "Basic Training – Probation/Parole Intensive Officer" course, and advanced (in service) training courses for correctional officers, extradition officers, PERT teams, intensive supervision and surveillance probation/parole officers, and all Division of Youth Services unarmed self defense courses.~~

~~(c) Each corrections specialized unarmed self defense instructor training course shall include as a minimum the following identified topical areas and minimum instructional hours for each area:~~

(1) Introduction to Unarmed Self Defense	2 Hours
(2) Basic Exercises, Techniques and Methods	12 Hours
(3) Basic Come Alongs and Control Techniques	14 Hours
(4) Restraint Application	10 Hours
(5) Instructional Methods/Techniques	30 Hours
(6) Program Evaluation	12 Hours

~~(d) Commission accredited schools that are accredited to offer the "Corrections Specialized Instructor Training/Unarmed Self-Defense" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.~~

Authority G.S. 17C-6.

12 NCAC 09B .0231 BASIC TRAINING – PROBATION/PAROLE INTENSIVE OFFICER

~~In addition to the requirements for Basic Training for Probation/Parole Officers and Intake Officers contained in 12 NCAC 09B .0208 of this Section, every Probation/Parole Intensive Officer shall complete a supplemental training course contained in 12 NCAC 09B .0223 of this Section, and an Advanced Training Program which shall include training in the following identified topical areas and minimum instructional hours for each area:~~

(1) Working with Special Probationers/Parolees	30 Hours
to include as a minimum the following subject areas:	
(a) The Criminal Personality	
(b) Substance Abuse Offender	
(c) Violent/Sexual Offender	
(d) High Risk Probationers/Parolees	
(2) Advanced Communication Skills	31 Hours
to include as a minimum the following subject areas:	
(a) Active Listening	
(b) Deception	
(c) Assertiveness Training	
(d) Supervision Styles	
(e) Professional Speaking	

(3)	Personal/Professional Skills Development	32 Hours
	to include as a minimum the following subject areas:	
	(a) Professional Ethics	
	(b) Time Management	
	(c) Stress Management	
	(d) Advanced Physical Fitness Education	
(4)	Community Social Issues	22 Hours
	to include as a minimum the following subject areas:	
	(a) Domestic and Family Violence	
	(b) Satanism/Gangs	
	(c) Multi-Cultural Sensitivity and Awareness	
(5)	Personal Protection	20 Hours
	to include as a minimum the following subject areas:	
	(a) Search Practicum	
	(b) Practical Skills in Self-Defense	
	(c) Weapons Safety	
(6)	Special Resource Programs for Probationers/Parolees	8 Hours
(7)	Practical Skills for Testifying in Violation Hearings	4 Hours
(8)	Administrative Matters, Review, and Testing	7 Hours
	—————	Total 154 Hours

Authority G.S. 17C-6.

**SECTION .0300 – MINIMUM STANDARDS FOR
CRIMINAL JUSTICE INSTRUCTORS**

**12 NCAC 9B .0304 SPECIALIZED INSTRUCTOR
CERTIFICATION**

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Subject Control Arrest Techniques
- (2) First Responder
- (3) Firearms
- (4) Law Enforcement Driver Training
- (5) Physical Fitness
- ~~(6) Firearms (DOC)~~
- ~~(7)(6) Unarmed Self-Defense (DOC/DYS), (DJJDP)~~
- ~~(8)(7) Medical Emergencies (DJJDP)~~
- ~~(9)(8) Electrical and Hazardous Materials Emergencies~~

(b) To qualify for Specialized Instructor Certification, with the exception of the First Responder, Physical Fitness, ~~Youth Services Department of Juvenile Justice and Delinquency Prevention~~ Medical Emergencies, and Electrical and Hazardous Materials Emergencies topical areas as outlined in Rule .0304 (d), (e), (f), and (g) of this Section, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a commission-recognized school director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing.

(d) To qualify for Specialized Instructor Certification in the First Responder topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify through one of the following two options:

- (1) The first option is:
 - (A) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (B) hold current basic Emergency Medical Technician certification; and
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate.
- (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (C) hold current basic EMT certification.

(e) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant may become certified through one of the following two methods:

- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and

- (B) successfully complete the pertinent ~~commission-approved~~Commission-approved specialized instructor training course; and
 - (C) obtain the recommendation of a ~~commission-recognized~~Commission-recognized ~~school~~School ~~director~~Director.
- (2) The second method is:
- (A) successfully complete the pertinent ~~commission-approved~~Commission-approved specialized instructor training course; and
 - (B) obtain the recommendation of a ~~commission-recognized~~Commission-recognized ~~school~~School ~~director~~Director; and
 - (C) in addition to the requirements of ~~both (2), items~~ (A) and (B) of this ~~Rule Subparagraph~~, the applicant must meet one of the following qualifications:
 - (i) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
 - (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.
- (f) To qualify for Specialized Instructor Certification in the Electrical and Hazardous Materials Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify through one of the following two options:
- (1) The first option is:
 - (A) hold current instructor certification as a First Responder Awareness Level Hazardous Materials instructor; and
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
 - (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) have successfully completed a First Responder Awareness Level Hazardous Materials course.

(g) To qualify for Specialized Instructor Certification in the ~~State Youth Services~~Department of Juvenile Justice and Delinquency Prevention Medical Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but must qualify in the following manner:

- (1) have successfully completed a commission-accredited basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, within the 12 month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements.

Authority G.S. 17C-6.

SUBCHAPTER 09C – ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0200 - FORMS

12 NCAC 09C .0205 REPORT OF APPOINTMENT

The Report of Appointment ~~appears in two versions: one is for law enforcement officers, and one is for correctional personnel. Each form~~ is used for reporting the appointment of criminal justice officers and indicating the applicant's progress toward completing the requirements for certification.

Authority G.S. 17C-6; 150B-11.

12 NCAC 09C .0207 APPLICATION FOR AWARD OF PROFESSIONAL CERTIFICATE

The Application For Award of Law Enforcement Certificate, requests information regarding the education, training, and experience qualifying the applicant for various levels of certification under the Law Enforcement Officers' Professional Certificate Program. The Application For Award of Criminal Justice Certificate, requests information regarding the education, training, and experience qualifying the State Youth Services officer/applicant for various levels of certification under the Criminal Justice Officers' Professional Certificate Program.

Authority G.S. 17C-6; 150B-11.

12 NCAC 09C .0208 REPORT OF SEPARATION

The Report of Separation, is used for reporting the date of and reason for the separation of a criminal justice office from the employing agency. ~~Two versions of the form are used; one for criminal justice officers, and one for correctional officers.~~

Authority G.S. 17C-6; 150B-11.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0100 - SCOPE, APPLICABILITY, AND DEFINITIONS

12 NCAC 09G .0101 SCOPE AND APPLICABILITY OF SUBCHAPTER

This Subchapter governs the implementation of minimum standards for employment, training, and certification of three classes of corrections officers: correctional officers, probation/parole officers, and probation/parole officers-surveillance as well as the standards for corrections schools and the state corrections certificate program. Definitions and procedures contained within 12 NCAC 09. Subchapters A-F do not apply to these classes of corrections officers, unless specifically referenced; only rules specifically included in Subchapter 09G apply to these employees of the North Carolina Department of Correction.

Authority G.S. 17C-1; 17C-6; S.L. 1999, c. 200, s. 67-17.3a.

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (2) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (3) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (4) "Correctional Officer" means an employee of the North Carolina Department of Correction, Division of Prisons, responsible for the custody of inmates or offenders.
- (5) "Corrections Officer" means any or all of the three classes of officers employed by the North Carolina Department of Correction; correctional officer; probation/parole officer; and probation/parole officer-surveillance.
- (6) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Correction.
- (7) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (8) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution

of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- (9) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (10) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:
 - (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor);
 - (b) 14-27.7 Intercourse and sexual offenses with certain victims (If definition is school personnel other than a teacher, school administrator, student teacher or coach);
 - (c) 14-32.1(f) Assault on handicapped persons;
 - (d) 14-32.2(b)(4) Patient abuse and neglect, punishments;
 - (e) 14-32.3(c) Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of <one thousand dollars (\$1000.00);
 - (f) 14-33(b)(9) Assault, battery against sports official;
 - (g) 14-33(c) Assault, battery with circumstances;
 - (h) 14-34 Assault by pointing a gun;
 - (i) 14-34.6(a) Assault on Emergency Personnel;
 - (j) 14-54 B or E into buildings generally (14-54(b));
 - (k) 14-72 Larceny of prop./rec'g. stolen goods etc.; <one thousand dollars (\$1000.00) (14-72(a))14-72.1 Concealment of merchandise (14-72.1(e); 3rd offense);
 - (l) 14-76 Larceny, mutilation, or destruction of public records/papers;
 - (m) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6);
 - (n) CH 14 Art. 19B Financial transaction card crime (14-113.17(a));
 - (o) 14-114(a) Fraudulent disposal of prop./security interest;
 - (p) 14-118 Blackmailing;
 - (q) 14-118.2Obtaining academic credit by fraudulent means (14-118.2(b));
 - (r) 14-122.1Falsifying documents issued by a school (14-122.1(c));

PROPOSED RULES

- (s) 14-127 Willful and wanton injury to real property;
- (t) 14-160 Willful and wanton injury to personal property > two hundred dollars (\$200.00) (14-160(b));
- (u) 14-190.5Preparation of obscene photographs;
- (v) 14-190.9Indecent Exposure;
- (w) 14-190.14 Displaying material harmful to minors (14-190.14(b));
- (x) 14-190.15 Disseminating harmful material to minors (14-190.15(d));
- (y) 14-202.2Indecent liberties between children;
- (z) 14-202.4Taking indecent liberties with a student;
- (aa) 14-204 Prostitution (14-207;14-208);
- (bb) 14-223 Resisting officers;
- (cc) 14-225 False, etc., reports to law enforcement agencies or officers;
- (dd) 14-230 Willfully failing to discharge duties;
- (ee) 14-231 Failing to make reports and discharge other duties;
- (ff) 14-232 Swearing falsely to official records;
- (gg) 14-239 Allowing prisoners to escape punishment;
- (hh) 14-255 Escape of working prisoners from custody;
- (ii) 14-256 Prison breach and escape;
- (jj) 14-258.1(b) Furnishing certain contraband to inmates;
- (kk) 14-259 Harboring or aiding certain persons;
- (ll) CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268);
- (mm) 14-269.2Weapons on campus or other educational property (14-269.2(d), (e) & (f));
- (nn) 14-269.3(a) Weapons where alcoholic beverages are sold and consumed;
- (oo) 14-269.4Weapons on state property and in courthouses;
- (pp) 14-269.6Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b));
- (qq) 14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1)& (e));
- (rr) 14-277.2(a) Weapons at parades, etc., prohibited;
- (ss) 14-277.3Stalking (14-277.3(b));
- (tt) CH 14 Art. 36A Riot (14-288.2(b));
- (uu) CH 14 Art. 36A Inciting to riot (14-288.2(d));
- (vv) CH 14 Art. 36A Looting; trespassing during emergency (14-288.6(a));
- (ww) CH 14 Art. 36A Transporting weapon or substance during emergency (14-288.7(c));
- (xx) CH 14 Art. 36A Assault on emergency personnel; punishments (14-288.9(c));
- (yy) 14-315(a) Selling or giving weapons to minors;
- (zz) 14-315.1Storage of firearms to protect minors;
- (aaa) 14-316.1Contributing to delinquency;
- (bbb) 14-318.2Child abuse;
- (ccc) 14-360 Cruelty to animals;
- (ddd) 14-361 Instigating or promoting cruelty to animals;
- (eee) 14-401.14 Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b));
- (fff) 14-454(a) or (b) Accessing computers;
- (ggg) 14-458 Computer trespass (Damage <two thousand five hundred dollars (\$2500.00));
- (hhh) 15A-266.11 Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b));
- (iii) 15A-287 Interception and disclosure of wire etc. communications;
- (jjj) 15B-7(b) Filing false or fraudulent application for compensation award;
- (kkk) 18B-902(c) False statements in application for ABC permit (18B-102(b));
- (lll) 20-37.8 Fraudulent use of a fictitious name for a special identification card (20-37.8(b));
- (mmm) 20-102.1False report of theft or conversion of a motor vehicle;
- (nnn) 20-111(5) Fictitious name or address in application for registration;
- (ooo) 20-130.1Use of red or blue lights on vehicles prohibited (20-130.1(e));
- (ppp) 20-137.2Operation of vehicles resembling law-enforcement vehicles (20-137.2(b));
- (qqq) 20-138.1Driving while impaired (punishment level 1; 20-179(g) or 2 (20-179(h));
- (rrr) 20-138.2Impaired driving in commercial vehicle (20-138.2(e));
- (sss) 20-141.5(a) Speeding to elude arrest;

PROPOSED RULES

- (ttt) 20-166(b) Duty to stop in event of accident or collision;
- (uuu) 20-166(c) Duty to stop in event of accident or collision;
- (vvv) 20-166(c1) Duty to stop in event of accident or collision;
- (www) 50B-4.1 Knowingly violating valid protective order;
- (xxx) 58-33-105 False statement in applications for insurance;
- (yyy) 58-81-5 Careless or negligent setting of fires;
- (zzz) 62A-12 Misuse of 911 system;
- (aaaa) 90-95(d)(2) Possession of schedule II, III, IV;
- (bbbb) 90-95(d)(3) Possession of Schedule V;
- (cccc) 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor);
- (dddd) 90-95(e)(4) Conviction of 2 or more violations of Art. 5;
- (eeee) 90-95(e)(7) Conviction of 2 or more violations of Art. 5;
- (ffff) 90-113.22 Possession of drug paraphernalia (90-113.22(b));
- (gggg) 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c));
- (hhhh) 97-88.2(a) Misrepresentation to get worker's compensation payment;
- (iiii) 108A-39(a) Fraudulent misrepresentation of public assistance;
- (jjjj) 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments;
- (kkkk) 108A-64(a) Medical assistance recipient fraud; four hundred dollars (\$400.00) (108-64(c)(2));
- (llll) 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b));
- (mmmm) 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c));
- (nnnn) 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement;
- (oooo) 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement;
- (pppp) 113-290.1(a)(4) Criminally negligent hunting; death results;
- (qqqq) 113-290.1(d) Criminally negligent hunting; person convicted/suspended license;
- (rrrr) 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c));
- (ssss) 147C-3 Aiding escapes from an institution or youth services;
- (tttt) 148-45(d) Aiding escape or attempted escape from prison;
- (uuuu) 162-55 Injury to prisoner by jailer;
- (vvvv) Common-Law misdemeanors:
- (i) Going Armed to the Terror of the People;
- (ii) Common-Law Mayhem;
- (iii) False Imprisonment;
- (iv) Common-Law Robbery;
- (v) Common-Law Forgery;
- (vi) Common-Law Uttering of Forged paper;
- (vii) Forcible Trespass;
- (viii) Unlawful Assembly;
- (ix) Common-Law Obstruction of Justice; and
- (wwww) Those offenses occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule.
- (11) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with 12 NCAC 09G .0404.
- (12) "Probation/Parole Officer" means an employee of the North Carolina Department of Correction, Division of Community Corrections, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Community Corrections.
- (13) "Probation/Parole Officer-Surveillance" means an employee of the North Carolina Department of Correction, Division of Community Corrections, other than a regular probation/parole officer who is trained in corrections techniques, and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Community Corrections, whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation, parole, or post release supervision program operated by the Division of Community Corrections.
- (14) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to

the certified School Director during the planning, development, and implementation of an accredited course.

- (15) "School" means an institution, college, university, academy, or agency which offers penal or corrections training for correctional officers, probation/parole officers, or probation/parole officers-surveillance. "School" includes the corrections training course curricula, instructors, and facilities.
- (16) "School Director" means the person designated by the sponsoring institution or agency to administer the "School."
- (17) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (18) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. 20 classroom hours of Commission-approved corrections training equals one State Corrections training point.

Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

12 NCAC 09G .0103 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in G.S. 150B, Article 3;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A -1; and
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby adopted by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such adoptions by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

(d) Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03 and that 26 NCAC 03 .0101(2); .0102(a)(1); and .0103(b) shall not apply.

(e) An applicant for certification or a certified officer shall have 60 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40.

SECTION .0200 - MINIMUM STANDARDS FOR CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0201 EMPLOYMENT PROCESS: DOCUMENTATION: AND RECORDS RETENTION

(a) The North Carolina Department of Correction is a state agency and is subject to G.S. 126. The employment process shall be consistent with the rules established by the State Personnel Commission as authorized by G.S. 126-4(6) and 126-4(7)(a).

(b) The North Carolina Department of Correction shall document the employment process and that the minimum standards for employment have been satisfied through forms as approved by the State Personnel Commission.

(c) The North Carolina Department of Correction shall maintain and release those employment records in accordance with G.S. 126-24.

Authority G.S. 126.

12 NCAC 09G .0202 CITIZENSHIP

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall be a citizen of the United States.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0203 AGE

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall be at least 20 years of age.

(b) Candidates shall document age through documents issued by any county, State, or federal government agency.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0204 EDUCATION

(a) Every person employed as a correctional officer by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.

(b) Every person employed as a probation/parole officer by the North Carolina Department of Correction shall be a graduate of a regionally accredited college or university and have attained at least the baccalaureate degree.

(c) Every person employed as a probation/parole officer-surveillance by the North Carolina Department of Correction shall be a high school graduate or have passed the General Educational Development Test indicating high school equivalency.

(d) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Correction documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

(1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a recognized public school or an approved private school which, in either case, meet the approval guidelines of the North Carolina Department of Public Instruction or comparable out-of-state agency. The Director of the Standards Division shall determine whether other types of documentation will be permitted in specific cases. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.

(2) Documentary evidence of completion of the General Educational Development "GED" Test shall be satisfied by a certified copy of GED test results showing successful completion. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall have been examined and certified by a licensed physician, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina within one year prior to employment with the North Carolina Department of Correction to determine the officer's mental and emotional suitability to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- (1) not having been convicted of a felony for 10 years since the date of conviction or the completion of any corrections supervision imposed by the courts whichever is later;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years since the date of conviction or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) having submitted to and produced a negative result on a drug test which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (4) submitting to a background investigation consisting of:
 - (a) verification of age;
 - (b) verification of education;
 - (c) criminal history check of local, state, and national files; and
- (5) being truthful in providing all required information as prescribed by the application process.

Authority G.S. 17C-6; 17C-10.

SECTION .0300 - CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, PROBATION/PAROLE OFFICERS-SURVEILLANCE, AND INSTRUCTORS

12 NCAC 09G .0301 CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-surveillance shall be certified as prescribed by these Rules. The Commission shall certify an officer as either a probationary officer or general officer based on the officer's qualifications and experience.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer, probation/parole officer, or probation/parole officer-surveillance shall notify the Standards Division of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. Criminal offenses shall include all felony offenses and shall specifically include those misdemeanor offenses delineated in 12 NCAC 09G .0102.

(b) The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in

which the case was handled, the date of arrest or criminal charge, the final disposition and the date thereof. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

(c) The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification.

(d) Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrest(s), or criminal charge(s), and final disposition(s), shall also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

Authority G.S. 17C-6.

12 NCAC 09G .0303 PROBATIONARY CERTIFICATION

(a) A prospective employee may commence active service as a correctional officer, probation/parole officer, or probation/parole officer-surveillance at the time of employment.

(b) Within 90 days of appointment, the North Carolina Department of Correction shall submit a completed Report of Appointment/Application for Certification to the Standards Division.

(c) The Commission shall certify as a probationary officer a person meeting the minimum standards for certification when the North Carolina Department of Correction submits a completed Report of Appointment/Application for Certification to the Standards Division.

(d) The Standards Division shall issue the person's Probationary Certification to the North Carolina Department of Correction.

(e) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner terminated for cause or the officer has attained General Certification.

(f) Documentation of Probationary Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0304 GENERAL CERTIFICATION

(a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.

(b) General Certification is continuous from the date of issuance, so long as:

- (1) The certified officer remains continuously employed as a correctional officer, probation/parole officer, or probation/parole

officer-surveillance in good standing with the North Carolina Department of Correction and the certification has not been terminated for cause; or

- (2) The certified officer, having separated in good standing with the North Carolina Department of Correction, is re-employed within two years, and the certification has not been terminated for cause.

(c) Certified officers who, through promotional opportunities, move into non-certified positions within the Department, may have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0400 and are exempted from reverification of employment standards of 12 NCAC 09G .0202-.0206 when returning to a position requiring certification if they have maintained continuous employment within the Department.

(d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Correction and the Commission.

(e) Upon transfer of a certified officer from one type of corrections officer to another, the North Carolina Department of Correction shall submit a Notice of Transfer to the Standards Division.

- (1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.

- (2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has successfully completed the training requirements of 12 NCAC 09G .0400 within the officer's probationary period and the officer has met all other requirements for General Certification.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09G .0305 RECERTIFICATION FOLLOWING SEPARATION

(a) Previously certified corrections officers, with a minimum of one year of service who have been separated from the North Carolina Department of Correction for less than two years, may have their certification reinstated following a reverification of employment standards in 12 NCAC 09G .0202, .0203, and .0206 (excluding 12 NCAC 09G .0206(d)(2)), but are exempt from the job appropriate basic training course described in 12 NCAC 09G .0400.

(b) Previously certified corrections officers with less than one year of service who have been separated from the North Carolina Department of Correction for less than two years, may have their certification reinstated following a reverification of employment standards 12 NCAC 09G .0202, .0203, and .0206 (excluding 12 NCAC 09G .0206(d)(2)), and shall complete the

job appropriate basic training course described in 12 NCAC 09G .0400.

(c) Previously certified corrections officers who have been separated from the North Carolina Department of Correction for more than two years, upon their return shall complete the verification of employment standards and shall complete the job appropriate basic training course described in 12 NCAC 09G .0400.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

(a) The North Carolina Department of Correction shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer, and probation/parole officer-surveillance employed or appointed by the North Carolina Department of Correction. The certification file shall also contain:

- (1) the officer's Report of Appointment/ Application for Certification including the State Personnel Application;
- (2) the officer's Medical History Statement and Medical Examination Report to be maintained at the officer's local unit;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;
- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;
- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents to include, but not limited to, letters, investigative reports, and subsequent charges and convictions.

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. These records shall be maintained in compliance with the North Carolina Department of Correction's approved Records Retention Schedule, and as agreed upon by the Commission.

Authority 17C-2; 17C-6.

12 NCAC 09G .0307 CERTIFICATION OF INSTRUCTORS

(a) Any person participating in a Commission-accredited corrections training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification or Specialized Instructor Certification as outlined in 12 NCAC 09G .0308 and .0310 of this Section. Such instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-accredited course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing any instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09G .0414; or
- (4) has demonstrated unprofessional personal conduct in the delivery of Commission-mandated training; or
- (5) has demonstrated instructional incompetence; or
- (6) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or
- (7) has failed to meet or maintain good moral character as required to effectively discharge the duties of a corrections instructor; or
- (8) has failed to deliver training in a manner consistent with the curriculum outlines in the corrections officers' training manuals set out in 12 NCAC 09G .0411-.0416.

Authority G.S. 17C-6.

12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION

Certifications issued in this category after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in 12 NCAC 09G .0310, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in corrections and proficiency in the instructional process to the satisfaction of the Commission. At a minimum, the applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (a) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and has acquired four years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system;
 - (b) has been awarded an associate degree and has acquired three years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system;
 - (c) has been awarded a baccalaureate degree and has acquired two years of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system; or
 - (d) has been awarded a graduate/professional degree and has acquired one year of practical experience as a corrections officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing successful completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
 - (a) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the State Comprehensive Examination administered at the conclusion of the Commission-accredited instructor training program

or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

- (b) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course, shall complete a subsequent Commission-accredited instructor training course in its entirety.

Authority G.S. 17C-6.

12 NCAC 09G .0309 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be eligible for full general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission:

- (1) a favorable recommendation from a School Director accompanied by certification on a Commission-approved Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-accredited course or a Commission-recognized in-service training course during the probationary year. The results of the student evaluation of the instructor must be considered by the School Director when determining recommendation; or
- (2) a favorable written evaluation by a Commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a Commission-accredited course or a Commission-recognized in-service training course. Such evaluation will be certified on a Commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a Commission or staff member must also teach a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course.

(c) The term of certification as a general instructor is two years from the date the Commission issues the certification. The certification may subsequently be renewed by the Commission

for two-year periods. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0308 of this Section, documentary evidence indicating that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two year period preceding application for renewal, instructed a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course; and
- (2) a favorable written recommendation from a School Director accompanied by certification on a Commission-approved Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course during the two-year period of general certification; or
- (3) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the two-year period of General Instructor Certification. In addition, instructors evaluated by a Commission or staff member must also teach a minimum of eight hours in a Commission-accredited training course or a Commission-recognized in-service training course.

(d) All instructors shall remain active during their period of certification. If an instructor does not teach a minimum of eight hours during the period of certification, the certification shall not be renewed, and the instructor shall file application for General Instructor Certification, Probationary Status. Such applicants shall be required to meet the minimum requirements of 12 NCAC 09G .0308 of this Section.

Authority 17C-6.

12 NCAC 09G .0310 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Firearms (DOC); and
- (2) Unarmed Self-Defense (DOC).

(b) To qualify for Specialized Instructor Certification, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09G .0309 of this Section;
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and

- (3) obtain the recommendation of a Commission-recognized School Director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing.

Authority G.S. 17C-6.

12 NCAC 09G .0311 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor will be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor will only be required to satisfy the teaching requirement for the general probationary instructor certification. The instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued; and
- (3) where Specialized Instructor Certification becomes concurrent with an existing 24 month period of General Instructor Certification, the instructor must teach a minimum of eight hours for each specialized topic for which certification has been issued.

(c) The term of certification as a specialized instructor shall not exceed the 24 month period of full General Instructor Certification. The certification may subsequently be renewed by the Commission at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two year period preceding application for renewal, instructed at least eight hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-accredited training course or a Commission-recognized in-service

training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director; and

(2) a favorable written recommendation from a School Director accompanied by certification that the instructor successfully taught at least eight hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited training course or a Commission-recognized in-service training course during the two year period of Specialized Instructor Certification; or

(3) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the two-year period of Specialized Instructor Certification. In addition, instructors evaluated by a Commission or staff member must also teach at least eight hours in each of the topics for which Specialized Instructor Certification was granted.

(d) All instructors shall remain active during their period of certification. If an instructor does not teach at least eight hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to successfully teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least eight hours in each of the specialized topics during the two-year period of which certification was granted. Upon application for re-certification, such applicants shall be required to meet the minimum requirements of 12 NCAC 09G .0310 of this Section.

Authority G.S. 17C-6.

12 NCAC 09G .0312 INSTRUCTOR CERTIFICATION RENEWAL

Individuals who hold General Instructor Certification or Specialized Instructor Certification may, for just cause, be granted an extension of the two-year period to successfully teach the eight hour minimum requirement. The Director of the Standards Division may grant such extensions on a one time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

Authority G.S. 17C-6.

12 NCAC 09G .0313 CORRECTIONS INSTRUCTOR TRAINING COURSE

(a) To successfully acquire Corrections Instructor Training the trainee shall:

(1) satisfactorily complete all of the required course work, specifically including each of the trainee presentations with video taping, playback, and critique as specified in the "Basic Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"

(2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written lesson plan and final 80-minute presentation; and,

(3) achieve a score of 75 percent correct answers on the comprehensive written examination.

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final 80-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

Authority G.S. 17C-6.

12 NCAC 09G .0314 COMPREHENSIVE WRITTEN EXAM - INSTRUCTOR TRAINING

(a) An authorized representative of the North Carolina Department of Correction shall administer a comprehensive written examination to each trainee who has satisfactorily completed the first 12 units of the Corrections Instructor Training Course as described in the "Basic Instructor Training Manual."

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(d) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each performance area of the course curriculum, who has scored at least 65 percent but has failed to achieve the minimum passing score of 75 percent on the comprehensive written examination, may request the Director of the Standards Division to authorize a re-examination of the trainee.

(1) The trainee's request for re-examination shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.

(2) The trainee's request for re-examination shall include the favorable recommendation of the School Director who administered the course.

(3) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.

(4) The trainee will be assigned in writing by the Standards Division staff a place, time, and date for re-examination.

(5) Should the trainee on re-examination not achieve the prescribed minimum score on the examination, the trainee may not be given successful course completion and shall enroll and successfully complete a subsequent offering of the instructor course in its entirety before further examination may be permitted.

(f) A trainee who fails to score at least 65 percent on the comprehensive written examination shall be terminated from the course.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0315 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" and "Specialized Unarmed Self-Defense Instructor Training" course in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the School Director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who fails to achieve the minimum score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0316 PROFESSIONAL LECTURER CERTIFICATION

(a) The Commission may issue Professional Lecturer Certification to a person in a profession, who, by virtue of academic degrees and professional expertise, has developed special knowledge in one or more of the following areas:

- (1) Law; or
- (2) Psychology; or
- (3) Medicine.

(b) To be eligible for such certification, an applicant shall:

- (1) be a graduate of an accredited law school, medical school, or other school accredited for conferring degrees in formally recognized professions acceptable to the Commission; and
- (2) obtain the endorsement of a commission-recognized School Director who shall:

(A) recommend the applicant for certification as a professional lecturer;

(B) describe the applicant's expected participation, topical areas, duties, and responsibilities in a delivery of Commission-accredited training course conducted by the school; and

(C) describe the attributes showing the applicant to be a beneficial contributor to the delivery or presentation in a Commission-accredited training program.

Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION /PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0401 ADMINISTRATION OF BASIC CORRECTIONS TRAINING SCHOOLS

(a) The Secretary of the North Carolina Department of Correction shall have primary responsibility for implementation of these Rules and standards and for administration of the school. The executive officer or officers of the institution or agency shall secure School Accreditation pursuant to 12 NCAC 09G .0402 prior to offering any corrections training course.

(b) The Secretary shall designate not more than one compensated staff member for each Commission-accredited program for which the North Carolina Department of Correction has been granted accreditation. Such staff member shall be formally certified by the Commission under Rule .0405 of this Subchapter to be the corrections School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited corrections training course. If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited training course, an additional Qualified Staff Person must be designated to assist the School Director in the administration of the course. This person must be selected by the School Director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

Authority 17C-6.

12 NCAC 09G .0402 ACCREDITATION OF CORRECTIONS SCHOOLS

(a) The Commission shall establish a standing subcommittee of the Education and Training Committee for the purposes of evaluating Request for School Accreditation applications and making recommendations to the Education and Training Committee on the granting of accreditation to institutions and agencies. The Accreditation Committee shall be comprised of two members appointed by the School Directors' Advisory Committee and two members who shall be commission

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members to include the North Carolina Community Colleges System's representative to the Commission. The Chairman of the Commission shall appoint the Chairman of the Accreditation Committee.

(b) Any school meeting the minimum requirements contained in 12 NCAC 09G .0400 must submit a properly completed Request for School Accreditation application. Upon receipt of a properly completed Request for School Accreditation application:

- (1) the Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) the applying institution or agency shall be contacted concerning deficiencies and assistance shall be given on correcting problem areas;
- (3) the application and staff reports are submitted to the Accreditation Committee for review;
- (4) a recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application; and
- (5) the Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(c) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for just cause.

(d) The identity of those schools accredited under this Rule shall be published and distributed annually by the Standards Division together with the name and business address of the School Director and the schedule of corrections training courses planned for delivery during the succeeding year.

(e) A school may apply for reaccreditation to the Commission by submitting a properly completed Request for School Accreditation application. The application for reaccreditation shall contain information on major changes in facilities, equipment, and staffing. Upon receipt of a properly completed application:

- (1) the Standards Division staff shall review the application for any omissions and clarification;
- (2) copies of the site visits conducted during the last period of certification shall be attached to the application;
- (3) the application and staff reports shall be submitted to the Accreditation Committee for review;
- (4) a recommendation shall be submitted to the Education and Training Committee on the approval or denial of the application; and
- (5) the Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of reaccreditation of the applicant institution or agency.

(f) In instances where accredited schools have been found to be in compliance with 12 NCAC 09G .0400 through favorable site visit reports, Standards Division staff shall be authorized to

reaccredit on behalf of the Commission. Such action shall be reported to the Commission through the Accreditation Committee and the Education and Training Committee at its next scheduled meeting.

(g) The Commission may suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation.

Authority G.S. 17C-6.

12 NCAC 09G .0403 ACCREDITATION OF TRAINING COURSES

(a) An accredited corrections school shall apply for accreditation for each of its courses by submitting a completed Request for Training Course Accreditation Form.

(b) One of two types of accreditation may be sought by the school, depending upon the nature of the course for which accreditation is sought.

- (1) Temporary accreditation shall apply to courses being offered by an accredited school on a one-time or infrequent basis and will remain effective for the duration of the specified course offering, not in excess of one year.
- (2) Continuing accreditation shall apply to courses offered on a regular or continuous basis by an accredited school and will remain effective until surrendered, revoked, or the school's accreditation expires, or is suspended, or is revoked.

(c) The Commission may suspend or revoke the accreditation of a course when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for course accreditation.

Authority G.S. 17C-6.

12 NCAC 09G .0404 PILOT COURSE PRESENTATION/PARTICIPATION

(a) Consistent with the curriculum development policy of the Commission, the Education and Training Committee shall recommend to the Commission the delivery system and the developer of course curricula. Designation of the developer of course curricula by the Commission shall be deemed as approval of the developer to conduct pilot courses.

(b) Individuals who successfully complete a pilot course offering shall not be required by other rules of this Subchapter to complete additional training for that specific certification program. Such pilot training courses shall be recognized for purposes of certification or recertification.

Authority G.S. 17C-6.

12 NCAC 09G .0405 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a Commission-accredited corrections training course shall be and continuously remain certified by the Commission as a School Director.

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(b) To qualify for certification as a corrections School Director, at a minimum, an applicant shall:

- (1) present documentary evidence showing that the applicant:
 - (A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required five years experience must have been while actively participating in corrections training as a Commission-certified instructor; or
 - (B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required four years experience must have been while directly participating in corrections training as a Commission-certified instructor; or
 - (C) has been awarded a baccalaureate degree acceptable to any Commission-accredited school in its criminal justice or corrections program. In addition, it is recommended that the applicant have some experience as a criminal justice or corrections officer or some experience in criminal justice or corrections training.
- (2) attend or must have attended the most current offering of the School Director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member may be required; and
- (3) submit a written request for the issuance of such certification executed by the executive officer of the North Carolina Department of Correction currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated School Director.

(c) To qualify for certification as a School Director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

- (1) document that he/she has been awarded a baccalaureate degree from an accredited institution of higher learning;
- (2) present evidence showing successful completion of a Commission-accredited instructor training course or an equivalent

instructor training program as determined by the Commission;

- (3) be currently certified as a criminal justice instructor by the Commission; and
- (4) document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

Authority G.S. 17C-6.

12 NCAC 09G .0406 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a School Director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of 12 NCAC 09G .0405(b)(2) and (b)(3).

(b) To retain certification as a School Director, the School Director shall adequately perform the duties and responsibilities of a School Director as specifically required in 12 NCAC 09G .0408.

Authority G.S. 17C-6.

12 NCAC 09G .0407 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION

(a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

Authority G.S. 17C-6.

12 NCAC 09G .0408 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

In planning, developing, coordinating, and delivering each Commission-approved corrections training course, the School Director shall:

- (1) formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) schedule course presentation for delivery such that each training course required for certification shall be presented on a regular basis; and
- (3) select and schedule qualified instructors who are certified by the Commission.

Authority G.S. 17C-6.

12 NCAC 09G .0409 ADMISSION OF TRAINEES AND COURSE ENROLLMENT

(a) The School Director shall determine the appropriate number of trainees to enroll in the offering.

(b) The school may not enroll any trainee later than the second day of delivery of an accredited training course unless the trainee's enrollment is pursuant to prescribed supplementary or remedial training required under 12 NCAC 09G .0410 of this Section.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0410 WAIVER OF COMPLETION OF TRAINING

(a) The Commission may waive an officer's completion of the Commission-accredited training course upon receiving documentary evidence from the North Carolina Department of Correction that the officer has satisfactorily completed equivalent training. All such officers, however, shall serve a one year period of probationary certification as defined in 12 NCAC 09G .0303.

(b) Training received in states with laws governing or regulating corrections officer training shall, if subject to such review, have been approved or certified by the appropriate agency of the state in which the training was received.

(c) The Commission shall prescribe as a condition of certification supplementary or remedial training deemed necessary to equate previous training with current standards.

(d) The Commission shall require satisfactory performance on a written examination as proof of equivalent training.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0411 BASIC TRAINING FOR CORRECTIONAL OFFICERS

(a) The basic training course for correctional officers shall consist of a minimum of 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a correctional officer. The instructional components of this course must be listed in the "Basic Correctional Officer Training Manual," and shall include, at a minimum: firearms training; unarmed self-defense; legal issues for correctional supervision; emergency procedures; Division of Prisons operational processes such as classification, search and seizure, health services, and contemporary correctional theory.

(b) The "Basic Correctional Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of correctional officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Correction
1001 Mountford Avenue
Raleigh, North Carolina 27626-0540

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0412 BASIC TRAINING FOR

PROBATION/PAROLE OFFICERS

(a) The basic training course for probation/parole officers shall consist of a minimum of 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer. The instructional components of this course must be listed in the "Basic Probation/Parole Officer Training Manual," and shall include, at a minimum: unarmed self-defense; court processes; case processing and management; arrest procedures; basic life support; physical fitness; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Correction
1001 Mountford Avenue
Raleigh, North Carolina 27626-0540

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0413 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS-SURVEILLANCE

(a) The basic training course for probation/parole officers-surveillance shall consist of a minimum of 160 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer-surveillance. The instructional components of this course must be listed in the "Basic Probation/Parole Officer-Surveillance Training Manual," and shall include, at a minimum: firearms training; unarmed self-defense; court processes; case processing and management; arrest procedures; basic life support; physical fitness; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer-Surveillance Training Manual" as published by the North Carolina Department of Correction is to be applied as the basic curriculum for delivery of probation/parole officer-surveillance basic training courses. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Correction
1001 Mountford Avenue
Raleigh, North Carolina 27626-0540

and may be obtained at cost from the Department of Correction.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0414 INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

PROPOSED RULES

(c) Each instructor training course shall include, as a minimum, the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation and Pretest;
- (2) Curriculum Development: ISD Model;
- (3) Civil Liability for Law Enforcement Trainers;
- (4) Interpersonal Communication in Instruction;
- (5) Lesson Plan Preparation: Professional Resources;
- (6) Lesson Plan Preparation: Format and Objectives;
- (7) Teaching Adults;
- (8) Principles of Instruction: Demonstration Methods and Practical Exercise;
- (9) Methods and Strategies of Instruction;
- (10) The Evaluation Process;
- (11) Principles of Instruction: Audio-Visual Aids;
- (12) Student 10-Minute Talk and Video Critique;
- (13) Student Performance:
 - _____ First 30-Minute Presentation;
 - _____ Second 30-Minute Presentation;
 - _____ Final 80-Minute Presentation; and
- (14) Examination.

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy is to be applied as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be purchased at cost from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

Authority G.S. 17C-6.

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - FIREARMS

(a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training--Correctional Officer" course, "Basic Training--Probation/Parole Officer" course, "Basic Training--Probation/Parole Officer-Surveillance" course, and in-service training courses for correctional officers, PERT teams, and probation/parole officers-surveillance.

(c) Each corrections specialized firearms instructor training course shall include, as a minimum, the following topical areas:

- (1) Overview;
- (2) Legal Considerations for Firearms Instructors;
- (3) Firearms Safety;

- (4) Range Operations;
- (5) Range Medical Emergencies;
- (6) Revolver - Operation, Use, and Maintenance;
- (7) Advanced Revolver Training;
- (8) Revolver Night Firing;
- (9) Rifle Training and Qualification;
- (10) Shotgun Training and Qualification;
- (11) Maintenance and Repair of Rifles and Shotguns;
- (12) Special Techniques, Training Aids, and Methods;
- (13) Chemical Weapons;
- (14) Situational Use of Firearms;
- (15) Day and Night Practical Courses of Fire; and
- (16) Administrative Matters, Testing, and Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training - Firearms" course are The Office of Staff Development and Training of the North Carolina Department of Correction.

Authority 17C-6.

12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - UNARMED SELF-DEFENSE

(a) The instructor training course requirement for corrections specialized unarmed self-defense instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized unarmed self-defense instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections unarmed self-defense instructor in the "Basic Training--Correctional Officer" course, "Basic Training--Probation/Parole Officer" course, "Basic Training--Probation/Parole Officer-Surveillance" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer-surveillance, and all Department of Juvenile Justice and Delinquency Prevention unarmed self-defense courses.

(c) Each corrections specialized unarmed self-defense instructor training course shall include, as a minimum, the following topical areas and minimum instructional hours for each area:

- (1) Introduction to Unarmed Self-Defense;
- (2) Basic Exercises, Techniques and Methods;
- (3) Basic Come-A-Longs and Control Techniques;
- (4) Restraint Application;
- (5) Instructional Methods/Techniques; and
- (6) Program Evaluation.

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training/Unarmed Self-Defense" course are The Office of Staff Development and Training of the North Carolina Department of Correction.

Authority G.S. 17C-6.

SECTION .0500 - ENFORCEMENT OF RULES

12 NCAC 09G .0501 INVESTIGATION OF VIOLATION OF RULES

(a) If any corrections agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of these Rules, the Commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Standards Committee of the Commission.

(c) The Standards Committee shall convene prior to the next regular meeting of the Commission, shall consider the report of the Standards Division, and shall make a determination as to whether or not probable cause exists that the Commission's rules have been violated.

(d) The Standards Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation by the State Bureau of Investigation of the alleged violation;
- (3) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to 12 NCAC 09G .0103; or
- (4) determine the appropriate sanctions against the violator pursuant to the Commission's rules.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0502 SANCTIONS FOR VIOLATIONS BY AGENCIES OR SCHOOLS

If the Commission finds that a violation has been committed by an agency or school, the Commission may:

- (1) issue an oral warning and request for compliance;
- (2) issue a written warning and request for compliance;
- (3) issue an official written reprimand;
- (4) suspend and refuse to grant accreditation to any school or program or course of instruction until proper corrective measures have been taken to bring the agency or school into compliance with these Rules and verification of such compliance has been made by the Commission; or
- (5) suspend and refuse to grant accreditation to any school or program or course of instruction for a specific period of time not to exceed five years.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0503 SANCTIONS FOR VIOLATIONS BY INDIVIDUALS

When any person certified by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not reoccur, including:

- (1) issuing an oral warning and request for compliance;

- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking or denying the individual's certification.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-surveillance when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or

- attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by these Rules;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a corrections officer and the person may not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0505 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense; or
- (2) the second suspension of an officer's certification for any of the causes requiring a three year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of Section 09G of these Rules.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102;
- (2) discharge by the North Carolina Department of Correction pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;

- (3) refusal to submit to the applicant drug screen required by these Rules;
- (4) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G .0206(c), where the positive result cannot be explained to the Commission's satisfaction;
- (5) material misrepresentation of any information required for certification or accreditation;
- (6) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating;
- (7) failure to make either of the notifications as required by 12 NCAC 09G .0302;
- (8) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (9) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements; or
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0506 SUMMARY SUSPENSIONS

(a) The Commission, by and through the Standards Committee, may summarily suspend the certification of a corrections officer or instructor before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Standards Committee, the public health, safety, or welfare requires this emergency action of summary suspension. The Commission has determined that the following condition specifically affects the public health, safety, or welfare and therefore it, by and through the Standards Committee, may utilize summary suspension when the person has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification.

(b) For the purpose of considering a summary suspension of certification, the Standards Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the

person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the North Carolina Department of Correction shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

Authority G.S. 17C-6; 17C-10; 150B-3.

SECTION .0600 - PROFESSIONAL CERTIFICATE PROGRAM

12 NCAC 09G .0601 PURPOSE

In order to recognize the level of competence of corrections officers serving within the State, to foster increased interest in college education and professional corrections training programs, and to attract highly qualified individuals into a corrections career, the Criminal Justice Education and Training Standards Commission establishes the State Corrections Officers' Professional Certificate Program. This program is a method by which dedicated officers may receive statewide and nationwide recognition for education, professional training, and on-the-job experience.

Authority G.S. 17C-6.

12 NCAC 09G .0602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications, except as provided for in 12 NCAC 09G .0602(a)(4):

- (1) The officer shall presently hold general corrections officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall hold general certification with the Commission in one of the following categories:
 - (A) correctional officer;
 - (B) probation/parole officer; or
 - (C) probation/parole officer-surveillance.
- (3) The officer shall be a permanent, full-time, paid employee of the North Carolina Department of Correction.
- (4) Permanent, paid employees of the Department of Correction who have successfully

12 NCAC 09G .0604 INTERMEDIATE STATE CORRECTIONS CERTIFICATE

(a) In addition to the qualifications set forth in 12 NCAC 09G .0602(a) of this Section, an applicant for the Intermediate State Corrections Certificate shall possess or be eligible to possess the Basic State Corrections Certificate and shall have acquired the following combination of educational points or degrees, corrections training points and years of corrections experience:

Educational Degrees	AA/AS			AB/BS	
Years of Corrections Experience	8	6	4	4	2
Minimum Corrections Training Points	-	-	-	15	10
Minimum Total Education and Training					

completed a Commission-accredited corrections officer basic training program and have previously held general certification as specified in 12 NCAC 09G .0602(a)(1) and (a)(2), but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the Department of Correction from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula which combines formal education, corrections training, and actual experience as a corrections officer. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) 20 classroom hours of Commission-approved corrections training shall equal one point; and
- (3) only experience as a permanent, paid employee of the North Carolina Department of Correction or the equivalent experience as determined by the Commission shall be acceptable of consideration.

(c) Certificates will be awarded in an officer's area of expertise only. The State Corrections Certificate is appropriate for permanent, paid corrections employees employed by the North Carolina Department of Correction.

Authority G.S. 17C-6.

12 NCAC 09G .0603 BASIC STATE CORRECTIONS CERTIFICATE

In addition to the qualifications set forth in 12 NCAC 09G .0602(a) of this Section, an applicant for the Basic State Corrections Certificate shall have completed the probationary period prescribed by the Commission, but in no case less than one year and shall have completed an accredited basic training course or the equivalent as determined by the Commission, in the category in which the applicant is employed.

Authority G.S. 17C-6.

PROPOSED RULES

Points	30	60	90	15	10
(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college, or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body, or the state university of the state in which the institution is located.					

Authority G.S. 17C-6.

12 NCAC 09G .0605 ADVANCED STATE CORRECTIONS CERTIFICATE

(a) In addition to the qualifications set forth in 12 NCAC 09G .0602(a) of this Section, an applicant for the Advanced State Corrections Certificate shall possess or be eligible to possess the Intermediate State Corrections Certificate and shall have acquired the following combinations of educational points or degrees, corrections training points and years of corrections experience:

Educational Degrees	AA/AS	AB/BS	GRAD./PRO.		
Years of Corrections Experience	12	9	9	6	4
Minimum Corrections Training Points	-	-	25	15	10
Minimum Total Education and Training Points	60	90	25	15	10

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college, or university accredited as such by the Department of Education of the state in which the institution is located, the recognized national accrediting body, or the state university of the state in which the institution is located.

Authority G.S. 17C-6.

12 NCAC 09G .0606 METHOD OF APPLICATION

(a) All applicants for an award of the basic, intermediate, or advanced certificates in the professional certificate program shall complete an "Application for Award of State Corrections Certificate."

(b) Documentation of education and training shall be provided by certified copies of transcripts, diplomas, Report of Training Course Completion, agency training records, or other verifying documents attached to the application.

(c) The applicant shall submit the "Application for Award of State Corrections Certificate" to his department head who shall attach his recommendation and forward the application to the Commission. Certificates will be issued to the Department head for award to the applicant.

(d) Certificates and awards remain the property of the Commission, and the Commission shall have the power to cancel or recall any certificate or award.

Authority G.S. 17C-6.

SECTION .0700 - FORMS

12 NCAC 09G .0701 REPORT: APPLICATION: AND CERTIFICATION FORMS

The following are Commission approved forms to be used by the North Carolina Department of Correction in making reports, applications, or requests for certification to the Commission:

- (a) The Medical History Statement. The Medical History Statement is a questionnaire to be completed by an applicant. The form seeks to facilitate the applicant's medical examination by listing information pertinent to the applicant's present and past physical condition, injuries, diseases, or operations.

(b) The Medical Examination Report. The Medical Examination Report is a form provided to the examining physician to record the results of the applicant's medical examination.

(c) The Request for School Accreditation Form. The Request for School Accreditation Form provides the means for an agency or institution to become certified to conduct corrections training and to affiliate with the Criminal Justice Education and Training System. It seeks information on the physical, financial, and staff support provided to the school by the agency or institution.

(d) The Request for Training Course Accreditation Form. The Request for Training Course Accreditation Form is used to obtain accreditation for a school's particular offering of a corrections training course. It requests information regarding the administration of the course, the particular facilities to be used, and the proposed curriculum of the course.

(e) The Report of Appointment/Application for Certification. The Report of Appointment/Application for Certification is used for reporting the appointment of correctional officers, probation/parole officers, and probation/parole officers-surveillance and indicating the applicant's progress toward completing the requirements for certification. The questions, at a minimum, seek information regarding the applicant's work, residential, military history, arrest history, and references.

PROPOSED RULES

- (f) Notice of Transfer. The Notice of Transfer form is used to notify the Standards Division of an officer's change in the type of corrections officer certification.
- (g) Report of Separation. The North Carolina Department of Correction, when separating a person from employment as a correctional officer, probation/parole officer, or probation/parole officer-surveillance, shall forward to the Commission a properly completed Report of Separation within 30 days of separation.
- (h) The Request for Instructional Certification Form. The Request for Instructional Certification Form is used by persons seeking certification as general instructors. It seeks information regarding personal and professional background as well as documentation of the specific criteria for certification.
- (i) The Recommendation for General Instructor Certification Form. The Recommendation for General Instructor Certification Form is completed by a School Director or agency head after an instructor has finished the required probationary period. In the form the official recommends that the instructor receive General Instructor Certification and certifies that the official has observed and evaluated the instructor to be a teaching professional.
- (j) The Application for Award of State Corrections Certificate. The Application For Award of State Corrections Certificate requests information regarding the education, training, and experience qualifying the applicant for various levels of certification under the State Corrections Officers' Professional Certificate Program.

Date: October 9, 2001

Time: 2:00 p.m.

Location: Commissioner's Boardroom (Room 216), Department of Social Services Building, 175 Linville St., Newland, NC, 28657

Reason for Proposed Action: *Proposed Reclassification of the French Broad River and Nolichucky River to Class B. A request for reclassification of these rivers was submitted by the Asheville Regional Office DWQ staff as follows: French Broad River (Transylvania, Henderson, Buncombe, and Madison Counties; French Broad River Basin) from Class C/C Tr/WS-IV/WS-IV CA to Class B/B Tr/WS-IV&B/WS-IV CA&B (Primary Recreation) and Nolichucky River (Mitchell and Yancey Counties; French Broad River Basin) from Class C to Class B (Primary Recreation). This reclassification consists of the entire French Broad River main stem including the main stems of its four headwater forks as well as the Bent Creek watershed (below Lake Powhatan dam) and Davidson River watershed, and the entire Nolichucky River main stem including the North Toe River main stem from S.R.1187 (near Toecane). Approximately 160 and 23 river miles exist within the proposed French Broad River and Nolichucky River reclassification area, respectively. The purpose of this rule change is to protect the existing waters' primary recreation uses. Primary recreation means swimming, skin diving, water skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. Both of these rivers receive heavy recreational use, with 27 river boat access sites on the main stem of the French Broad River and national forest land within both river areas. Water quality studies conducted in the summers of 1998 and 1999 show that the rivers meet the criteria for Class B in the above-mentioned areas proposed for reclassification. If reclassified, new wastewater discharges, expansions of existing discharges, and existing discharges with fecal violations to these waters will need to comply with reliability standards; these standards require facilities to insure continued treatment of wastewater during instances of power failure. In addition, dischargers who do not currently have a fecal limit will be required to have a fecal limit and disinfect. The water quality standard to be met for fecal coliform for Class B waters is that it not exceed a geometric mean of 200/100 ml based on at least five consecutive samples examined during any 30-day period and it not exceed 400/100 ml in more than 20% of the samples examined during such a period. For dischargers to Tr waters that do not disinfect by chlorination but wish to do so, a chlorine limit and dechlorination will be required. It is important to note that sources of water pollution which preclude any uses affiliated with a B classification shall be considered to be violating a water quality standard, and discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation.*

Proposed Reclassification of North Toe River from Class C Tr to WS-V Tr. The Town of Spruce Pine has requested that the headwaters of the North Toe River and their associated tributaries which exist above their WS-IV North Toe River Water Supply Watershed in Avery County (French Broad River Basin) be reclassified from Class C Tr to WS-V Tr. The segment of the river which is requested for reclassification extends from a point located approximately 4.5 miles due north of the Avery

Authority 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR-Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0304. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing: For French Broad River and Nolichucky River
Date: July 31, 2001

Time: 3:30 p.m.

Location: Simpson Building (1st floor lecture room), Asheville-Buncombe Technical Community College, 340 Victoria Rd., Asheville, NC, 28801

Public Hearing: For North Toe River

PROPOSED RULES

County/Mitchell County line to the headwaters (source); this point is also the upper boundary of a WS-IV water supply watershed (which extends downstream to the Spruce Pine water supply intake). Thus, in this case, no intake or critical area for an intake is located nor is proposed to be located in the waters to be reclassified. The Town's current water supply intake, critical area, and protected area will not be altered, but all waters above and draining to the water supply watershed will be reclassified; this proposed area comprises the northernmost portion of the North Toe River. The tributaries flowing into the part of the North Toe River to be reclassified are currently Class C Tr or Class C, and these tributaries are proposed to be reclassified to WS-V Tr and WS-V, respectively. The Public Water Supply (PWS) Section of the NC Division of Environmental Health (DEH) has given the town permission to pursue expansion of their water treatment plant, and as part of this process, the town was required by the NC DEH PWS Section to request this reclassification. Avery County, Mitchell County and the Town of Newland are the potentially affected governments. No confirmation that the water is suitable for treatment for potable use was required from the PWS Section, and DWQ did not collect water samples from the waters to be reclassified in order to determine if these waters meet the water quality standards required by a WS-V classification; this confirmation and sampling were not required because the waters proposed to be reclassified are located above a current water supply (WS-IV) intake, and therefore met water quality standards for a water supply classification. In addition, all the waters proposed to be reclassified had a water supply classification in 1994; due to a following court decision and an EMC rule reinterpretation, the water supply classifications of some of these waters were removed. Furthermore, staff with the PWS Section is not aware of any new discharges or pollution sources in the waters proposed for reclassification since an earlier sanitary survey of those waters was done in 1990. If reclassified, water supply water quality standards will apply to these waters for protection of the water supply, and all current and future NPDES discharges will need to comply with these standards which are more stringent than the existing Class C water quality standards. Due to the past classification history of these waters, the current NPDES discharges into the proposed waters already meet these more stringent standards. In addition, DOT Best Management Practices (BMPs) will need to be applied as practical for WS-V waters (whereas no specific DOT BMPS are required for Class C waters). Unlike other WS classifications, the WS-V designation involves no categorical restrictions on watershed development or wastewater dischargers, and local governments are not required to adopt watershed protection ordinances.

Comment Procedures: The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. You may attend a public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at a public hearing, if necessary, so that all those who wish to speak may have an

opportunity to do so. You may also submit written comments, data or other relevant information by August 15, 2001 for the French Broad River and Nolichucky River reclassification and by October 23, 2001 for the North Toe River reclassification. Written comments may be submitted to: Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083 extension 369.

Fiscal Impact

- State
- Local
- Substantive (\geq \$5,000,000)
- None

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B – SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 – ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0304 FRENCH BROAD RIVER BASIN

- (a) The schedule may be inspected at the following places:
 - (1) Clerk of Court:
 - Avery County
 - Buncombe County
 - Haywood County
 - Henderson County
 - Madison County
 - Mitchell County
 - Transylvania County
 - Yancey County
 - (2) North Carolina Department of Environment and Natural Resources
 - Asheville Regional Office
 - Interchange Building
 - 59 Woodfin Place
 - Asheville, North Carolina.
- (b) Unnamed Streams. Such streams entering Tennessee will be classified "B."
- (c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:
 - (1) September 22, 1976;
 - (2) March 1, 1977;
 - (3) August 12, 1979;
 - (4) April 1, 1983;
 - (5) August 1, 1984;
 - (6) August 1, 1985;
 - (7) February 1, 1986;
 - (8) May 1, 1987;
 - (9) March 1, 1989;
 - (10) October 1, 1989;
 - (11) January 1, 1990;
 - (12) August 1, 1990;
 - (13) August 3, 1992;
 - (14) October 1, 1993;
 - (15) July 1, 1995;
 - (16) November 1, 1995;
 - (17) January 1, 1996;

PROPOSED RULES

- (18) April 1, 1996;
- (19) August 1, 1998;
- (20) August 1, ~~2000~~, 2000;
- (21) August 1, 2002.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 541) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCA C 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers

7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] was reclassified from City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS- III CA (Critical Area).

(m) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the revision to the primary classification for portions of the French Broad River [Index No. 6-(38.5)] and the North Toe River 7-2-(10.5) from Class IV to Class C.

(n) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the reclassification of Clear Creek [Index No. 6-55-(1)] from its source to Lewis Creek from Class C Tr to Class B Tr.

(o) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2000 with the reclassification of Rough Creek [Index No. 5-8-4-(1)], including all tributaries, from its source to the Canton Reservoir from Class WS-I to Class WS-I Tr ORW.

(p) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the revision to the primary classification for the French Broad River [Index No. 6-(1), 6-(27), 6-(47.5), 6-(52.5), and 6-(54.5)] including its four headwater forks' mainstems, watershed of tributary Davidson River, and watershed of tributary Bent Creek below Powhatan Dam, and the Nolichucky River [Index No. 7] including a lower portion of the North Toe River from Class C and Class WS-IV to Class B.

(q) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the reclassification of the North Toe River [Index No. 7-2-(0.5)], including all tributaries, from source to a point 0.2 mile upstream of Pyatt Creek, from Class C Tr to Class WS-V Tr.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR-Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0315. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: September 6, 2001

Time: 7:00 p.m.

Location: Waller Building (auditorium), Lenoir Community College, Campus Dr., Kinston, NC 28502

Reason for Proposed Action: *Proposed Reclassification of Neuse River from Class C NSW to WS-IV NSW. The Wooten Company has requested on behalf of Lenoir County that a Neuse River segment in Lenoir County (Neuse River Basin) be reclassified to Water Supply-IV (WS-IV) so that five cities in Lenoir County and perhaps adjacent counties may meet demands for long-term drinking water supply. The river segment requested for reclassification is currently Class C NSW (Nutrient Sensitive Waters) and extends from Pot Neck (which is along S.R. 1324 just east of its intersection with S.R. 1335) to a point on the Neuse River in Lenoir County near the Wayne County/Lenoir County line. Included in the proposed watershed are tributaries that are currently classified as Class C NSW or Class C Sw (Swamp) NSW. Under the current proposal, the area that is within 10 miles and draining to the intake (known as the Protected Area associated with a WS-IV intake) would be reclassified to WS-IV NSW and WS-IV Sw NSW, and the area 0.5 mile and draining to the river intake would be reclassified to WS-IV CA (Critical Area) NSW. The North Carolina Division of Environmental Health Public Water Supply Section has stated that "technology is available to provide treatment that will allow the Neuse River to be utilized as a potable water supply source." Local government/s that have land use jurisdiction within the water supply watershed are responsible for developing and implementing water supply watershed ordinances within the*

Protected Area and Critical Area. The designated local government's will have 270 days after the effective date of the proposed rule to develop and/or modify their watershed protection land use ordinances that must at least meet the state's minimum requirements (15A NCAC 2B .0100 and .0200). The result of the proposed reclassification will be that the Town of LaGrange and Lenoir County would be required to develop and/or modify their water supply watershed protection ordinances within 270 days following the effective date of the reclassification. If reclassified, additional regulations will be required in the proposed water supply watershed. Projects that require a state Sedimentation and Erosion Control Plan and are located within the proposed water supply watershed will be required to comply with development density and buffer requirements. More specifically, where land disturbing activities in WS-IV watersheds require a Sedimentation and Erosion Control Plan, development is limited to two dwelling units (du) per acre or 24% built upon area (low density option). For those developments without curb and gutter street systems, development may take place up to three du/acre or 36% built upon area in the PA. A high density option, which requires control of runoff of the first inch of rainfall through the use of engineered stormwater controls, permits development at up to 50% built upon area in the CA and 70% built upon area in the PA. Within these options there is considerable flexibility for local governments such as averaging development density. Thirty foot stream buffers are required with the low density option, and 100 foot buffers are required with the high density option. In WS-IV water supply watersheds domestic and industrial wastewater NPDES dischargers are allowed, although in the WS-IV CA, new industrial process wastewater discharges will have additional wastewater treatment requirements. (It is important to note that currently there are no permitted dischargers in the area proposed for reclassification.) No new permitted landfills will be allowed in the CA, and DOT Best Management Practices (BMPs) will be required throughout the entire proposed water supply watershed. The table below summarizes and compares the requirements of the existing and proposed classifications.

Classification	Area Affected	Low Density Development Option	High Density Development Option*	Allowable Wastewater Discharges	Landfills Allowed	DOT BMPs
Class C NSW (Existing)	<i>Receiving Stream (NSW includes entire watershed or river basin)</i>	<i>No Restrictions</i>		<i>Domestic and Industrial (NSW requires additional N&P removal)</i>	<i>No Specific Restrictions</i>	<i>Not Required</i>
WS-IV Critical Area (Proposed)	<i>1/2 mile and Draining to Intake</i>	<i>1 DU / 0.5 acre or 24% BUA and 30' Buffers</i>	<i>24-50% BUA and 100' Buffers</i>	<i>Domestic and Industrial (new industrial discharges will require additional treatment)</i>	<i>No New Landfills</i>	<i>Required</i>
WS-IV Protected Area (Proposed)	<i>Rest of Water Supply Watershed (10 miles run-of-river upstream and draining to intake)</i>	<i>1 DU / 0.5 acre or 24% BUA and 30' Buffers</i> <i>Optional: 3 DU / acre or 36% BUA w/o curb and gutter street system</i>	<i>24-70% BUA and 100' Buffers</i> <i>Optional: 3 DU / acre or 36% BUA w/o curb and gutter street system</i>	<i>Domestic and Industrial</i>	<i>No Specific Restrictions</i>	<i>Required</i>

DU = Dwelling Unit; BUA = Built Upon Area

**High Density Option requires control of runoff from first 1" of rainfall by engineered stormwater controls. Local governments must assume ultimate responsibility for operation/maintenance of these in a WS-IV.*

Comment Procedures: *The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. You may attend the public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. You may also submit written comments, data or other relevant information by September 20, 2001. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083 extension 369.*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B – SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 – ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0315 NEUSE RIVER BASIN

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
 - Beaufort County
 - Carteret County
 - Craven County
 - Durham County
 - Franklin County
 - Granville County
 - Greene County
 - Johnston County
 - Jones County
 - Lenoir County
 - Nash County
 - Orange County
 - Pamlico County
 - Person County
 - Pitt County
 - Wake County
 - Wayne County
 - Wilson County
 - (2) North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue

Washington, North Carolina
(C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994;
- (20) July 1, 1996;
- (21) September 1, 1996;
- (22) April 1, 1997;
- (23) August 1, ~~1998-1998~~;
- (24) August 1, 2002.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line

beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified

from Class WS-IV NSW to Class WS-IV&B NSW.

- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .1008, and amend the rule cited as 15A NCAC 02Q .0102. Notice of Rule-making Proceedings was published in the Register on May 1, 2001 for 15A NCAC 02D .1008 and on August 16, 1999 for 15A NCAC 02Q .0102.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: August 9, 2001

Time: 7:00 p.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 02D .1008 – Heavy Duty Diesel Engine Requirements is proposed for adoption to require that no model year 2005 or 2006 heavy-duty diesel engine (HDDE) be sold, leased, or registered in North Carolina unless it has been certified by the California Air Resources Board as meeting specific supplemental test requirements in Title 13 of the California Code of Regulations, Section 1956.8.

15A NCAC 02Q .0102 – Activities Exempted from Permitting Requirements allows the Director of the Division of Air Quality (DAQ) to revoke the permit-exempt status for a source or activity of a non-Title V facility or a facility without a permit found in violation of an applicable requirement.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until August 16, 2001, to receive additional written statements. To be included, the statement must be received by the Division by August 16, 2001. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641, (919) 733-1489 Phone, (919) 715-7476 Fax, thom.allen@ncmail.net.

Fiscal Impact

- State 15A NCAC 02D .1008
Local
Substantive (>\$5,000,000)
None 15A NCAC 02Q .0102

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 – DEFINITIONS AND REFERENCES

15A NCAC 02D .1008 HEAVY DUTY DIESEL ENGINE REQUIREMENTS

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

- "Heavy duty diesel engine." means any diesel engine used in a vehicle with a gross vehicle weight rating of 14,001 pounds and greater.
"Model year" means model year as defined in 40 CFR Section 85.2302.

(b) Requirement. No model year 2005 or 2006 heavy duty diesel engine may be sold, leased, or registered within North Carolina unless it has been certified by the California Air Resources Board as described in Title 13 of the California Code of Regulations, Section 1956.8 (as amended).

Authority G.S. 143-215.3(a)(1).

SUBCHAPTER 02Q – AIR QUALITY PERMIT PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except:
(A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
(B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
(C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or
(D) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
(2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;
(3) prevention of significant deterioration under 15A NCAC 02D .0530;
(4) new source review under 15A NCAC 02D .0531 or .0532;
(5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg County according to 15A NCAC 02D .0902;
(6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
(7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (b) of this Rule).

(c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:

PROPOSED RULES

- (1) activities exempted because of category:
 - (A) maintenance, upkeep, and replacement:
 - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
 - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
 - (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (iv) use of fire fighting equipment;
 - (v) paving parking lots; or
 - (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
 - (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (C) laboratory activities:
 - (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
- (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
- (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
- (iv) research and development laboratory activities provided the activity produces no commercial product or feedstock material;
- (D) storage tanks:
 - (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;
 - (ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;
 - (iii) storage tanks used solely to store inorganic liquids; or
 - (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
 - (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
 - (ii) residential wood stoves, heaters, or fireplaces;
 - (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater

PROPOSED RULES

- (G) treatment processes for which there are no applicable requirements;
 - (G) gasoline distribution: gasoline service stations or gasoline dispensing facilities;
 - (H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
 - (I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:
 - (i) The portable solvent distillation system is not:
 - (I) owned by the facility, and
 - (II) operated at the facility for more than seven consecutive days; and
 - (ii) The material recycled is recycled at the site of origin;
 - (J) processes:
 - (i) small electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (ii) small electric motor bake-on ovens;
 - (iii) burn-off ovens for paint-line hangers with afterburners;
 - (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (v) blade wood planers planing only green wood;
 - (K) solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills.);
 - (L) miscellaneous:
 - (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
 - (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
 - (iii) equipment used for the preparation of food for direct on-site human consumption;
 - (iv) a source whose emissions are regulated only under
- (v) Section 112(r) or Title VI of the federal Clean Air Act;
- (vi) exit gases from in-line process analyzers;
- (vii) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (viii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment; equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds;
- (ix) equipment that does not emit any regulated air pollutants;
- (x) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard.);
- (xi) sources for which there are no applicable requirements
- (xii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
- (A) storage tanks:
- (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or
 - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with

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- a true vapor pressure of no more than 10.8 psi absolute at 70°F;
- (B) combustion and heat transfer equipment:
 - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed of with natural gas or liquefied petroleum gas with a heat input of less than:
 - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
 - (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
 - (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour;
 - (iii) space heaters burning waste oil if:
 - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
 - (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
 - (III) The combustion gases from the heater are vented to the ambient air;
- (iv) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
 - (I) 310 kilowatts (electric) or 460 horsepower for natural gas-fired engines,
 - (II) 830 kilowatts (electric) or 1150 horsepower for liquefied petroleum gas-fired engines,
 - (III) 270 kilowatts (electric) or 410 horsepower for diesel-fired or kerosene-fired engines, or
 - (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;
- (v) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation;
- (vi) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:

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- (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of: volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
 - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
 - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
 - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
- (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:
 - (I) storage tanks,
 - (II) fuel combustion equipment,
 - (III) space heaters burning waste oil,
 - (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate:
 - (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air

- (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
- (V) bulk gasoline plants,
- (VI) printing, paint spray booths, or other painting or coating operations,
- (VII) sawmills,
- (VIII) perchloroethylene dry cleaners, or
- (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit;

- (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate:
- (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air

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pollutants are below their lesser quantity cutoff emission rates; or

(iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;

(F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:

(i) to be negligible in their air quality impacts,

(ii) not to have any air pollution control device, and

(iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(e) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (b) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (b) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he may revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03J .0103; 03M .0101, .0501; 3O .0302. Notice of Rule-making Proceedings was published in the Register on January 2, 2001 and February 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 15, 2001

Time: 7:00 p.m.

Location: Brunswick Community College, Teaching Auditorium, Administration Building, 50 College Rd., Supply, NC

Public Hearing:

Date: August 30, 2001

Time: 7:00 p.m.

Location: Comfort Inn, 200 Gateway Blvd., Rocky Mount, NC

Public Hearing:

Date: September 11, 2001

Time: 7:00 p.m.

Location: NC Aquarium, Neptunes Theater, Airport Rd., Manteo, NC

Public Hearing:

Date: September 20, 2001

Time: 7:00 p.m.

Location: Beaufort Community College, Hwy 264E, Washington, NC

Public Hearing:

Date: September 25, 2001

Time: 7:00 p.m.

Location: Radisson Prince Charles, 450 Hay St., Fayetteville, NC

Public Hearing:

Date: October 3, 2001

Time: 7:00 p.m.

Location: Best Western Crystal Coast Resort, 109 Salter Path Rd., Atlantic Beach, NC

Reason for Proposed Action:

15A NCAC 03J .0103; 03M .0501 - The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the procedures for management of fisheries in North Carolina. Included were requirements for Fishery Management Plans. Notice of Text was published in 15:22 NCR 1880-1883 by publication of temporary rules. Copies of 15:22 NCR 1880-1883 were mailed to the Marine Fisheries Commission's interested parties list (approximately 750 individuals). Section 6.10 of the Fisheries Reform Act authorizes the Marine Fisheries Commission to adopt rules to implement this act. The Red Drum Fishery Management Plan was approved on March 30, 2001. The change in the attendance line uses landmarks more easily recognized by fishermen and Marine Patrol personnel. The change in the proclamation authority allows for flexibility in management of both recreational and commercial fisheries, deletes a daily trip limit which while in place allowed for an overage in the harvest of the red drum commercial harvest cap and amends the fishing year from a calendar year to one that more accurately reflects when the fishery is prosecuted. Implementation of this Rule is an integral part of implementing the Red Drum Fishery Management Plan.

15A NCAC 03M .0101 - The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the adoption of rules to implement the provisions of this act. The River Herring Fishery Management Plan adopted under the authority of the Fisheries Reform Act of 1997 recommended a creel limit for fish taken by hook-and-line. The fact that river herring and hickory shad are used as bait was overlooked and the effect that the mutilated finfish rules has on the use of any fish with a creel limit imposed on it was not foreseen. The use of herring, alewife and hickory shad as bait is a common practice in several fisheries, particularly striped bass. There was no

intent to not allow this practice to continue. Implementation of this rule is an integral part of implementing the River Herring Fishery Management Plan. Notice of Text was published in 15:22 NCR 1880-1883 by publication of the temporary rule. Copies of 15:22 NCR 1880-1883 were mailed to the Marine Fisheries Commission's interested parties list (approximately 750 individuals).

15A NCAC 030 .0302 - A petition for rulemaking from GoFishNC was received by the Marine Fisheries Commission in October, 2000, requesting that all gill nets used by Recreational Commercial Gear License holders be attended at all times. After hearing public discussion at the January 2001 meeting, a rule was drafted that requires attendance from Beaufort Inlet south, to include Newport River. Rule-making Proceedings noticing the public of this proposed action were published in 15:16 NCR 1461. Copies of 15:16 NCR 1880-1883 were mailed to the Marine Fisheries Commission's interested parties list (approximately 750 individuals).

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the six public hearings. All public hearings will begin at 7 p.m. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearing. The public comment period will end on October 3, 2001. The Marine Fisheries Commission will consider these rules and the public comments at a business session scheduled for October 4-5 at a location to be announced at a later date. At the conclusion of each of the six public hearings, the Marine Fisheries Commission will hold a public meeting to receive public comments on the Interjurisdictional Fishery Management Plan. A copy of this plan is available at no cost by contacting the Division of Marine Fisheries, Attention Dr. Louis Daniel, PO Box 769, Morehead City, NC 28557, phone 252-726-7021.

Fiscal Impact

- State
- Local
- Substantive (\geq \$5,000,000)
- None

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03J – NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 – NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use a gill net with a mesh length less than 2½ inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length.
- (4) Specify means/methods.

(5) Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in Paragraph (c) of this Rule, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net with lead and pound or heart in use;
- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
- (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the following areas:

- (1) Pamlico River, west of a line beginning at a point on Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to a point on Ragged Point at 35° 27.5768 N - 76° 54.3612' W;
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of the line from Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to Ragged Point at 35° 27.5768' N - 76° 54.3612' W and west of a line beginning at a

point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;

- (3) Pungo River, east of a line beginning at a point on Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 36.9195' W;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the line from Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 35.1594' W, and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;
- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries;
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of a line from the Highway 17 highrise bridge and west of a line beginning at a point on Wilkinson Point at 34° 57.9116' N - 76° 48.2240' W; to a point on Cherry Point at 34° 56.3658' N - 76° 48.7110' W.

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through October 31 in the following internal coastal and joint waters of the state south of a line beginning at a point on Roanoke Marshes Point at 35° 48.3693' N - 75° 43.7232' W; to a point on Eagle Nest Bay at 35° 44.1710' N - 75° 31.0520' W to the South Carolina State Line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no trawl areas described in 15A NCAC 03R .0106 (3),(4),(6), and (7);
- (2) In the area along the Outer Banks, beginning at a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point at 35° 00.2666' N - 76° 12.2000' W; to a point near Beacon "HL" at 35° 01.5833' N - 76° 11.4500' W; to a point near North Rock at 35° 06.4000' N - 76° 04.3333' W; to a point near Nine Foot Shoal Channel at 35° 08.4333' N - 76° 02.5000' W; to a point near the west end of Clark Reef at 35° 09.3000' N - 75° 54.8166' W; to a point south of Legged Lump at 35° 10.9666' N - 75° 49.7166' W; to a point on Legged Lump at 35° 11.4833' N - 75° 51.0833' W; to a point near No. 36 in Rollinson Channel at 35° 15.5000' N - 75° 43.4000' W; to a point near No. 2 in Cape Channel at 35° 19.0333' N - 75° 36.3166' W; to a point near No. 2 in Avon Channel at 35° 22.3000' N - 75° 33.2000' W; to a point at 35° 22.8000' N - 75° 33.6000' W; to a point on

Gull Island at 35° 28.4500' N - 75° 31.3500' W; to a point west of Salvo at 35° 32.6000' N - 75° 31.8500' W; to a point west of Rodanthe Pier at 35° 35.0000' N - 75° 29.8833' W; to a point near No. 2 in Chicamacomico Channel, to a point west of Beach Slough at 35° 40.0000' N - 75° 32.8666' W; to a point west of Pea Island at 35° 35.9833' N - 75° 31.2000' W; to a point 35° 45.1833' N - 75° 34.1000' W; to a point at 35° 44.1710' 44.1833' N - 75° 31.0520' 31.0833' W. Thence running south along the shoreline across the inlets to the point of beginning;

- (3) In Back and Core sounds, beginning at a point on Shackleford Banks at 34° 39.6601' N - 76° 34.4078' W; to a point at Marker #3 at 34° 41.3166' N - 76° 33.8333' W; to a point at 34° 40.4500' N - 76° 30.6833' W; to a point near Marker "A37" at 34° 43.5833' N - 76° 28.5833' W; to a point at 34° 43.7500' N - 76° 28.6000' W; to a point at 34° 48.1500' N - 76° 24.7833' W; to a point near Drum Inlet at 34° 51.0500' N - 76° 20.3000' W; to a point at 34° 53.4166' N - 76° 17.3500'; to a point at 34° 53.9166' N - 76° 17.1166' W; to a point at 34° 53.5500' N - 76° 16.4166' W; to a point at 34° 56.5500' N - 76° 13.6166' W; to a point at 34° 56.4833' N - 76° 13.2833' W; to a point at 34° 58.1833' N - 76° 12.3000' W; to a point at 34° 58.8000' N - 76° 12.5166' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point on Core Banks at 34° 58.7832' N - 76° 09.8922' W; thence following the shoreline south across Drum and Barden inlets to the point of beginning;
- (4) Within 200 yards of any shoreline, except from October 1 through October 31, south and east of Highway 12 in Carteret County and south of a line from a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to Camp Point at 35° 59.7942' N - 76° 14.6514' W to the South Carolina State Line.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03M – FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish which is subject to a size or harvest restriction without having head and tail attached. Blueback herring, hickory shad and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time.

Authority G.S. 113-134; 113-185; 143B-289.52.

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify ~~quantity~~ quantity for fish taken by commercial gear.
- (4) Specify means/methods.
- (5) Specify ~~size~~ size for fish taken by commercial gear.

(b) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(c) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.

(d) It is unlawful to possess more than one red drum per person per day taken-by hook-and-line or for recreational purposes.

~~(e) It is unlawful to possess more than 100 pounds of red drum per day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved.~~

~~(e)(f)~~ The annual commercial harvest limit (September through August 31) (~~January through December~~) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.

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

SUBCHAPTER 030 – LICENSES, LEASES, AND FRANCHISES

SECTION .0300 – LICENSE APPEAL PROCEDURES

15A NCAC 030 .0302 AUTHORIZED GEAR

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 ½ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may only be used to transport the seine;
- (1) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. Mechanical methods for retrieving the trawl are not authorized for recreational purposes, including but not limited to, hand winches and block and tackle;
- (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 ½ inches except as provided in

- (5) (C) of this Rule. Attendance is required at all times;
- (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches except as provided in (5) (C) of this Rule. Attendance is required when used from one hour after sunrise through one hour before sunset in the Atlantic Ocean and north and west of a line beginning at a point at Fort Macon at 34° 41.8167' N – 76° 40.5667' W, running to a point at the east end of the Beaufort Highway 70 Drawbridge at 34° 43.3000' N – 76° 41.1333' W including Newport River and its tributaries. The northern boundary in Newport River is the Highway 101 Bridge. Attendance is required at all times south and west of that line in internal waters; and sunset; and
- (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel;
- (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 ½ inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 ½ inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board; and
- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304.
- (b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) – (a)(6) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.
- (c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
- (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the

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Fisheries Director as authorized by the Marine Fisheries Commission.

Authority G.S. 113-134; 113-173.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 07B .0601-.0603; .0701-.0703; .0801-.0802; .0901-.0904; .1001, and repeal the rules cited as 15A NCAC 07B .0101; .0201; .0204; .0206-.0207; .0210-.0216; .0401-.0406; .0501-.0507. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 8, 2001 (deadline for written comments – July 25, 2001)

Time: 7:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC

Date: August 23, 2001 (deadline for written comments – August 9, 2001)

Time: 7:00 p.m.

Location: Pasquotank County Courthouse, 206 E Main Street, Elizabeth City, NC

Date: August 29, 2001 (deadline for written comments – August 15, 2001)

Time: 7:00 p.m.

Location: Beaufort County Courthouse, 112 W. 2nd Street, Washington, NC

Date: September 5, 2001 (deadline for written comments – August 22, 2001)

Time: 7:00 p.m.

Location: Craven County Courthouse, 406 Craven Street, New Bern, NC

Date: September 12, 2001 (deadline for written comments – August 29, 2001)

Time: 7:00 p.m.

Location: New Hanover County Courthouse, 314 Princess Street, Wilmington, NC

Reason for Proposed Action: In November, 1998, the Coastal Resources Commission (CRC) authorized the appointment of the Land Use Plan Review Team to evaluate the Coastal Area Management Act (CAMA) land use planning program and make recommendations for improvement. Based on the recommendations submitted in September 2000, the CRC is revising its land use planning guidelines (Subchapter 07B). The revised guidelines aim to improve the quality of local plans by better supporting the purposes and goals of CAMA. The rules include simple, clear requirements for land use plans, improved land suitability analysis and management topics to tie land use plans to CAMA goals.

Comment Procedures: Comments may be submitted to Kathy Vinson, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808, and will be accepted through September 12, 2001.

Fiscal Impact

- State
- Local
- Substantive (\geq \$5,000,000)
- None

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07B – LAND USE PLANNING GUIDELINES

SECTION .0100 – INTRODUCTION TO LAND USE PLANNING

15A NCAC 07B .0101 PURPOSE

~~(a) The Coastal Resources Commission finds that the Coastal Area Management Act of 1974 establishes a cooperative program of coastal area management between local governments and the state. The Commission further finds that land use planning lies at the center of local government's involvement and gives the local leaders an opportunity and responsibility to establish and enforce policies to guide the development of their community. While regulations, land acquisition, education and other management tools must continue to play an important role, the Commission finds that land use planning offers the best chance for developing a common vision and goals for the future that balance the economic development and resource protection necessary for a healthy coast.~~

~~(b) The land use planning should provide opportunities for careful technical analysis of the implications of various development alternatives, allow meaningful involvement of citizens in discussing the future of their community and provide a chance for local elected officials to make clear public policy choices for the future that help guide public and private investments. Land use planning is an important tool for effectively addressing the many complicated issues that face areas with high growth as well as those areas that are economically distressed and in great need of new employment opportunities. To those ends, these guidelines establish standards and procedures for development of local government Land Use Plans~~

~~(c) The rules in this Subchapter serve as state guidelines to assist local governments in each of the 20 coastal counties with the preparation of their own individual Land Use Plans. Each county and municipality shall develop a plan which reflects the desires, needs and best judgment of its citizens. Once approved by the Coastal Resources Commission, the local Land Use Plan becomes part of the North Carolina Coastal Management Plan.~~

~~(d) This Subchapter also sets forth general standards for use by the Commission in reviewing and considering local Land Use Plans. These standards include a basic format for the plans. These standards of review shall be considered by the Commission in determining whether to approve local Land Use Plans. The Commission, in its review, also shall consider submission dates, content, and similar matters as outlined in this Subchapter.~~

~~(e) Land development generally takes place as the result of a series of decisions by private individuals and government. If left entirely to chance, the resulting pattern of development in a locality may not be in the best interest of the overall community. In order to promote community interest for both present and future generations, a Land Use Plan shall be developed, adopted and kept current by local governments in the coastal area.~~

~~(f) The Land Use Plan is a framework that guides local leaders as they make decisions affecting development. Businesses, investors, new residents and other private individuals, as well as other levels of government, also use the plan to guide their land use decisions. Use of the plan by these groups leads to more efficient and economical provision of public services, protection of natural resources, sound economic development, and protection of public health and safety.~~

~~(g) Local governments, through the land use planning process, address issues and adopt policies that guide the development of their community. Many decisions affecting development are made by other levels of government, and local policies must consider and be consistent with established state and federal policies. Most development-related decisions, however, are primarily of local concern. Policies which address the type of development to be encouraged, the density and patterns of development, and the methods of providing public access to beaches and waterfronts are examples of these local policy decisions. When such development issues are carefully and explicitly addressed in the local Land Use Plan, other levels of government will follow local policies in their actions that affect those issues. State and federal agencies will use the local Land Use Plans and policies in making project consistency, funding and permit decisions.~~

Authority G.S. 113A-110; 113A-124.

SECTION .0200 – LAND USE PLAN

15A NCAC 07B .0201 CONTENTS OF THE LAND USE PLAN

~~(a) The Land Use Plan shall contain the basic elements listed in this Paragraph:~~

- ~~(1) Executive Summary [not applicable to Sketch Plans];~~
- ~~(2) Introduction;~~
- ~~(3) Goals and Objectives;~~
- ~~(4) Data Collection and Analysis;~~
- ~~(5) Present Conditions;~~
- ~~(6) Constraints;~~
- ~~(7) Estimated Demands;~~
- ~~(8) Policy Statements;~~
- ~~(9) Land Classification;~~
- ~~(10) Intergovernmental Coordination and Implementation; and~~
- ~~(11) Public Participation.~~

~~These 11 elements represent a minimum level of planning necessary to fulfill the objectives of the Coastal Area Management Act. Counties and municipalities shall use these minimum guidelines as a foundation from which to establish a more comprehensive planning and management process. The Land Use Plan shall be written as clearly as possible. The format and organization of the plan will enable users to find needed items quickly and easily. The local government shall~~

~~ensure that its Land Use Plan meets the substantive requirements of this Section.~~

~~(b) Small municipal governments that are not experiencing significant or rapid change or that are completely platted and know the upper limits of buildout may choose to develop a "Sketch" Land Use Plan or Update, with the concurrence of the Division of Coastal Management.~~

- ~~(1) While Sketch Plans must contain the minimum requirements called for in Paragraph (a) of this Rule, the level of data collection and analysis is generally much less than that for a full-sized plan.~~
- ~~(2) Sketch Plans should be clear, concise and easily understood. Sketch Plans may be produced in a foldout format with the narrative on one side and the required graphics such as the existing land use and land classification maps on the other side. Sketch Plans may also be produced in loose leaf format or some other more simplified format to facilitate subsequent updates.~~
- ~~(3) The intent of a Sketch Plan is to provide a document that meets the substantive needs of the local government without overburdening the community with a cumbersome document that has limited use. The preparation of a Sketch Plan is a simpler process because many of the issues dealt with in a full-sized Plan will not apply.~~
- ~~(4) Sketch Plans do not diminish the importance of the planning process to the community; they simply acknowledge that the municipality does not have the full range of natural resources and economic development pressures as those local governments which produce full-sized Land Use Plans or Updates.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0202 EXECUTIVE SUMMARY

~~An executive summary shall be prepared and included as an introduction to the Land Use Plan, or as a separate document. In either case, it shall be suitable for distribution throughout the planning area. The executive summary shall contain a summary of the land use issues which will affect the community during the planning period, the policies which the local government has selected to address those issues, and a land classification map. An executive summary is not required for a Sketch Land Use Plan.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0203 INTRODUCTION

~~The introduction to the Land Use Plan shall explain to the general public the specific reason for preparing a CAMA Land Use Plan. The Division of Coastal Management will provide each local government with suggested language for this section of the plan.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0204 GOALS AND OBJECTIVES

~~The Goals and objectives of the Land Use Plan shall be listed in this section of the plan. They should provide local application of CAMA goals.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0206 DATA COLLECTION AND ANALYSIS

~~Establishment of Information Base.~~

- ~~(1) The first basic element of the Land Use Plan is a presentation of pertinent local and regional data and a thorough analysis of those data. This information shall establish the information base necessary to make local policy choices about future land use and development in the community. The guidelines for data collection and analysis have been formulated so as not to place an unnecessary burden on the local planning resources. The Division of Coastal Management shall provide information on population, natural resources, water quality, economic activity and transportation infrastructure for counties and, where available, for municipalities and for each small watershed in the planning jurisdiction. Other information needs can generally be fulfilled by utilizing existing local plans and studies, including the previous Land Use Plan Update, as well as information provided by regional planning bodies. Local governments desiring to be more detailed or comprehensive than these guidelines suggest may do so.~~
- ~~(2) The process for data collection and analysis shall begin with an examination of present conditions. An estimate is then made of what land use demands are likely to be placed on the planning area during the ensuing 5 to 10-year period, based upon population and economic projections and upon local policies. The implications of the projected future demands are then examined and balanced against the suitability of the lands within the local government's jurisdiction for development and the capability of government to provide basic public services and facilities. This analysis should include the number of subdivisions and lots approved and building permits issued since the last plan. The local government should analyze how anticipated development will affect the need for services such as water, sewer, fire and police protection, schools, solid waste disposal, landfill life, transportation, parks, and adequacy of local administrative ability to carry out these services. The local government shall discuss these strong relationships as part of policy development.~~
- ~~(3) Data collection shall include information for the planning jurisdiction as a whole. Where~~

~~applicable, it shall also include information for each small watershed. A map of the 14-digit hydrologic units delineated by the U.S. Natural Resources Conservation Service shall be provided by the Division of Coastal Management. At a minimum, small watershed boundaries shall be shown on all maps included in the plan, and existing land uses shall be summarized for each watershed. Emphasis shall be placed on identifying those small watersheds in which water quality merits particular attention.~~

- ~~(4) Watersheds are useful in relating land use planning to environmental management objectives such as water quality protection, fisheries productivity, and habitat management. Because watersheds are defined by the areas within which water drains to a particular water body, they are appropriate units for considering relationships between land use and surface water quality. Small watershed units should be used as the basis for the aspects of Land Use Plans that relate to water quality. River basin plans developed by N.C. Division of Environmental Management provide a regional context for this watershed assessment.~~

~~The 14-digit hydrologic units delineated by the U.S. Natural Resource Conservation Service, are the largest watershed units appropriate for local watershed-based planning. The Division of Coastal Management will provide maps of these watershed boundaries to local governments for use in Land Use Plans. Local governments may use smaller watershed units if they are more useful for meeting local objectives.~~

~~Local governments are encouraged to use small watersheds as a framework for evaluating land use planning options. In particular, those watersheds where water quality appears to be either impaired or very high (such as Outstanding Resource Waters), should be examined with the intent of managing land use through a Land Classification System and by land use regulations. The Division of Coastal Management and Division of Environmental Management (DEM) will provide technical assistance to the extent practical in the consideration of DEM Basinwide Plans, the relationship between land use patterns and water quality, and the development of land use management controls.~~

- ~~(5) The Land Use Plan shall include a summary of the data collection and analysis, indicating the manner in which the data were assembled and evaluated along with a statement of major conclusions. This summary shall also provide an index showing where more detailed information can be found in technical appendices to the plans.~~
- ~~(6) The Land Use Plan shall also include an analysis of how effectively the local government has implemented the local policies contained in its previous Land Use Plan and what improvements it intends to make in this plan update. This evaluation should occur at the beginning of the update process so as to~~

provide a foundation upon which to develop new policies. This evaluation may be included as an introduction to the policy section called for in Rule .0212 of this Section or as an appendix to the plan.

- (2) a listing of all existing local land use regulations and ordinances and a brief description of the means for their enforcement (both staffing arrangements and the adequacy of ordinances themselves), such as zoning, subdivision, floodway, building, septic tank, historic district, nuisance, dune protection, wetland protection, sedimentation, environmental impact, stormwater management, mobile home park, group housing and planned unit development (PUD). The local government should also review the relationship of its local regulations and ordinances with its Land Use Plan policies and land classification map, and identify conflicts, inconsistencies and possible solutions. Specific permitted land uses, densities and lot sizes should be discussed.

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0207 PRESENT CONDITIONS

~~(a) Present Population and Economy. A brief analysis of the local population and economy shall be made utilizing existing information. Particular attention should be given to the impact of seasonal populations and to economic activities which affect coastal land and water resources.~~

~~(b) Existing Land and Water Uses. Existing land and water uses shall be mapped. The maps included in the Land Use Plan should be of an appropriate scale and quality for easy interpretation and should contain a synthesis of data gathered. Detailed maps should be prepared during plan development and retained for local government use as working documents. The maps used during plan development should include existing water conditions, including DEM stream classifications, water quality use support (as identified by DEM), watershed boundaries, wetlands, primary and secondary nursery areas, Outstanding Resource Waters, and other features such as shellfish beds, beds of submerged aquatic vegetation, and natural heritage protection sites. In addition, the maps should show the location of existing development and the location of major subdivisions that have been platted but not yet developed. Existing land uses should be considered as the basis for the land classification map called for in Rule .0213 of this Section. In this analysis, particular attention may be given to:~~

- ~~(1) significant land use compatibility problems;~~
- ~~(2) significant water use compatibility problems including those identified in any water supply plan appendix and those identified in the applicable DEM basinwide plan;~~
- ~~(3) significant problems that have resulted from unplanned development and that have implications for future land use, water use, or water quality;~~
- ~~(4) an identification of areas experiencing or likely to experience changes in predominant land uses, including agricultural and forestry land being converted to other uses and previously undeveloped shoreline areas where development is now occurring;~~
- ~~(5) significant water quality conditions and the connection between land use and water quality.~~

~~(c) Current Plans, Policies and Regulations. This element shall contain:~~

- ~~(1) a listing and narrative summary of existing plans and policies having significant implications for land use, including where applicable transportation plans, community facilities plans, water supply plans, solid waste plans, utilities extension policies, open space and recreation policies, and prior Land Use Plans and policies. This listing and summary shall distinguish between studies and other~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0210 CONSTRAINTS

~~(a) Land Suitability. An analysis shall be made of the general suitability for the development of undeveloped lands as identified on the map of existing land and water uses, with consideration given to the following factors: physical limitations for development, watersheds with impaired water quality, fragile areas, and areas with resource potential. The major purpose of this analysis is to assist in preparing the land classification map and, where applicable, in identifying which small watersheds have significant limitations or opportunities for development.~~

- ~~(1) Physical Limitations for Development. The Land Use Plan shall identify areas likely to have conditions making development costly or that would cause undesirable consequences if developed. The following areas shall be identified:~~
 - ~~(A) major hazard areas, including man-made hazards (for example, airports, tank farms for the storage of flammable liquids, nuclear power plants) and natural hazards (for example, ocean hazard areas, flood hazard areas, and areas that would be susceptible to sea level rise); reference the specific sources of the data such as flood insurance rate maps or county soils maps;~~
 - ~~(B) areas with soil limitations, including the following:~~
 - ~~(i) areas presenting hazards for foundations such as non-compacting soils;~~
 - ~~(ii) shallow soils;~~
 - ~~(iii) poorly drained soils;~~
 - ~~(iv) areas with limitations for septic tanks including both~~

areas that are generally characterized by soil limitations, but within which small pockets of favorable soils do exist; and areas where soil limitations are common to most of the soils present;

- (C) ~~where the information is readily available, water supply areas and the estimated quantity and quality of the water supply [unless discussed in a water supply plan appendix], including:

 - (i) ~~groundwater recharge areas (bedrock and surficial),~~
 - (ii) ~~public water supply watershed,~~
 - (iii) ~~public and community supply wellfields;~~~~
 - (D) ~~areas where the predominant slope exceeds 12 percent;~~
 - (E) ~~shoreline areas with a high erosion potential where bulkheads may be constructed in the future; and~~
 - (F) ~~small watersheds which drain into water bodies that the Environmental Management Commission has classified or designated Nutrient Sensitive Waters, Outstanding Resource Waters, Primary Nursery Areas, High Quality Waters, SA Waters, or not fully supporting waters.~~
- (2) ~~Fragile Areas. Based on information provided by the Division of Coastal Management. The Land Use Plan shall identify sensitive areas which could easily be damaged or destroyed by inappropriate or poorly planned development. These shall include Areas of Environmental Concern (AECs) as defined in 15A NCAC 07H and other areas that could qualify for AEC designation under 15A NCAC 07H .0500, including coastal wetlands, sand dunes along the Outer Banks, ocean beaches and shorelines, estuarine waters and estuarine shorelines, public trust waters, complex natural areas, areas that sustain remnant species, areas containing unique geologic formations, and archaeological or historic resources. Special emphasis should be given to other fragile areas such as maritime forests, prime wildlife habitats, scenic areas and prominent high points, archaeologic and historic sites, wetlands identified on Division of Coastal Management wetland maps, other wetlands, natural areas identified by the Division of Parks and Recreation's Natural Heritage Program, streams identified by the Division of Marine Fisheries as Anadromous Fish Spawning Areas, and other sensitive areas~~

not offered protection by existing Rules. Only an identification of fragile areas is called for here. Local policies to protect those areas are called for in Rule .0212(1) of this Section.

- (3) ~~Areas with Resource Potential. The Land Use Plan shall identify areas with resource potential, including productive and unique agricultural lands; potentially valuable mineral sites; publicly owned forests, parks, fish and gamelands, and other non-intensive outdoor recreation lands; and privately owned wildlife sanctuaries. Prime farmland shall be identified consistent with the Governor's Executive Order Number 96 promoting interagency coordination toward prime farmland preservation.~~

(b) ~~Community Services Capacity. An examination of community services capacity shall be made to assist the local government in evaluating its ability to provide basic community services to meet anticipated demand, as well as pointing out deficiencies which will need future attention and efforts. The plan shall contain comprehensive analyses of:~~

- (1) ~~Wastewater Management. This analysis shall project all wastewater treatment needs. It should include the following considerations:

 - (A) ~~Estimation of projected sewage treatment needs (including central systems, package treatment plants and septic systems) based upon projected population growth and the population that can be accumulated by the land classifications assigned in accordance with Rule .0213 of this Section. Such needs may not exceed the assimilative capacity of coastal lands, wetlands and waters to absorb point and nonpoint source pollution, including the secondary pollution resulting from growth induced by increased treatment capacity;~~
 - (B) ~~Water conservation and pollution prevention planning to reduce wastewater volume and pollutant concentration at public and private treatment facilities;~~
 - (C) ~~Re-use of treated water as a first alternative where feasible. Plans for land application of wastewater should ensure that application lands do not drain to waters classified for shellfish harvest;~~
 - (D) ~~Pursuit of non-discharge treatment technologies, such as connection to existing treatment facilities, land application or subsurface systems, as a first alternative;~~
 - (E) ~~Regionalization of discharge with best available treatment technology when discharges are necessary;~~
 - (F) ~~Incorporation of small communities with failing septic systems and of~~~~

- ~~(G) — Targeting of public funds for treatment facilities to low income communities with failing wastewater systems that are causing water quality impairment; and~~
- ~~(H) — Long-term maintenance and monitoring at on-site wastewater facilities.~~
- ~~(2) — Drinking Water Supply. Natural supplies of fresh surface and groundwater are limited in some parts of the coastal area. G.S. 143-355(1) requires all local governments that supply water to prepare plans to identify sources to meet projected needs. Updates of water supply plans should be coordinated to occur simultaneously with updates of the CAMA Land Use Plans. Conclusions of these water supply plans should be summarized in this section of the plan. The local government's capacity to provide adequate drinking water supplies in light of projected peak population estimates should be evaluated.~~
- ~~(3) — Transportation. Transportation improvements over the next 10 years necessary to meet local and regional peak population estimates shall be evaluated and mapped. To assist in this analysis, the Division of Coastal Management shall provide all transportation plans currently under development by the Department of Transportation to local governments. The ability of a local government to conduct a hurricane evacuation shall be determined.~~
- ~~(4) — Other Community Facilities and Services. Considerations of the design capacity of the existing schools, landfill or other solid waste disposal facility, police and fire protection capability, and public administrative ability. Peak seasonal population shall be used as a basis for public facility planning and policy development. Past peak season usage data should be used to predict future needs and demand.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0211 ESTIMATED DEMANDS

~~(a) — Population and Economy. A population estimate for the upcoming 10 years shall be made and used as the basis for determining land and facilities demand and for classifying land areas. Population projections from the Department of Administration shall be provided for counties by the Division of Coastal Management for use in making population estimates. The projections are based on prior trends with annual updates. The local government may use these trend projections as its population estimates or to modify them to include additional factors such as:~~

- ~~(1) — seasonal population. The local government shall use peak seasonal population as a basis for most public facility planning and policy development.~~
- ~~(2) — local objectives concerning growth. The local governments shall consider the local plans and policies concerning growth that are identified pursuant to Rules .0207(c) and .0212 of this Section.~~
- ~~(3) — foreseeable social and economic change. The local government shall evaluate the proportions of the local economy devoted to tourism, retail, construction and professional trades to illustrate social and economic changes.~~
- ~~(b) — Future Land Needs. To estimate the need for land for residential structures, commercial uses and related services, the population predictions shall be examined in relation to present and future types of land development. The estimated population increase should be distributed at density levels which have been stated in the policies described in Rule .0212 of this Section and in line with the land classification system outlined in Rule .0213 of this Section. These policies shall consider both past development densities and patterns and the desired future density and type of development.~~
- ~~(c) — Demand for Community Facilities and Services. Consideration shall be given to new and expanded facilities which will be required by the estimated population growth and the densities at which the land is to be developed. Features such as landfills, road widenings, bridges, water and sewer, police and fire protection, solid waste and schools should be considered in order to meet the intent of this item.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0212 POLICY STATEMENTS

~~(a) The plan shall contain statements of local policy on those land use issues which will affect the community during the 10-year planning period. This section shall begin with a general vision policy statement describing the type of community that the local government would like to become in the next 10 years. The issues shall include but not be limited to: resource protection, resource production and management, economic and community development, continued public participation and storm hazard mitigation. Policies may be specific to particular small watersheds and may differ among small watersheds with different conditions. Particular emphasis should be given to small watersheds with existing water quality impairment or other unique characteristics identified in the applicable Basinwide Plan or other state or local analysis. Local governments should ensure to the greatest extent possible that there is consistency among individual policies developed in each policy category. Particular attention should be given to individual policies in the resources protection, resources production and economic and community development categories. For example, a resource protection policy to "protect water quality in surface waters" should be reflected in economic and community development policies which would also affect surface water quality. Local governments may include the analysis of previous policy effectiveness called for in Rule .0206 of this Section as a preface to this policy section.~~

- (1) ~~Resource Protection.~~ The plan shall include a basic statement as to the community attitude toward resource protection:
- (A) ~~Local governments shall discuss each of the Areas of Environmental Concern (AECs) and other fragile areas that are listed in G.S. 113A-113 and located within its jurisdiction, and list the types of land uses which it feels are appropriate in each of those areas. In addition, the local government should identify, discuss and develop policies for issues that are locally significant, but not identified elsewhere in this Rule.~~
- (B) ~~At a minimum, the plan shall contain policy statements on the following resource protection issues (if relevant):~~
- (i) ~~constraints to development (e.g., soils, flood-prone areas). This shall include an explicit discussion of soil suitability/septic tank use;~~
 - (ii) ~~specific local resource development issues relative to areas of environmental concern designated under 15A-NCAC 07H and land uses and development densities in proximity to Outstanding Resource Waters;~~
 - (iii) ~~protection of wetlands identified as of the highest functional significance on maps supplied by the Division of Coastal Management (where available);~~
 - (iv) ~~other hazardous or fragile land areas, including but not limited to other wetlands, maritime forests, Outstanding Resource Water areas, shellfishing waters, water supply areas and other waters with special values, cultural and historic resources, and man-made hazards. This discussion may be in terms of the nomination procedure for Areas of Environmental Concern under Section .0500 of 15A-NCAC 07H;~~
 - (v) ~~means of protecting the potable water supply;~~
 - (vi) ~~the use of package plants for sewage treatment disposal. Discussion of package~~
- treatment plants should also include consideration of requirements for the ongoing private operation and maintenance of the plant(s) and provisions for assumption of the plant(s) into the public system should the private operation fail;
- (vii) ~~stormwater runoff associated with agriculture, residential development, phosphate or peat mining and their impacts on coastal wetlands, surface waters or other fragile areas;~~
 - (viii) ~~marina and floating home development, moorings and mooring fields, and dry stack storage facilities for boats associated either with or independent of marinas;~~
 - (ix) ~~industrial impacts on fragile areas;~~
 - (x) ~~development of sound and estuarine system islands;~~
 - (xi) ~~restriction of development within areas that might be susceptible to sea level rise;~~
 - (xii) ~~upland excavation for marina basins;~~
 - (xiii) ~~the damaging of existing marshes by bulkhead installation; and~~
 - (xiv) ~~water quality problems and management measures designed to reduce or eliminate local sources of surface water quality problems.~~
- (2) ~~Resource Production and Management.~~ The plan shall include a basic statement as to the community attitude toward resource production and management:
- (A) ~~Local governments shall discuss the importance of agriculture, forestry, mining, fisheries and recreational resources to the community. The most productive areas shall be identified and values of protecting these productive areas discussed. In addition, the local government should identify, discuss and develop policies for issues that are locally significant.~~
- (B) ~~At a minimum, the plan shall contain policy statements on the following resource production and management issues (if relevant):~~
- (i) ~~productive agricultural lands;~~

- (ii) — commercial forest lands;
 - (iii) — existing and potential mineral production areas;
 - (iv) — commercial and recreational fisheries; including nursery and habitat areas, Outstanding Resource Waters, and trawling activities in estuarine waters;
 - (v) — off-road vehicles;
 - (vi) — residential, commercial and industrial land development impacts on any resources; and
 - (vii) — peat or phosphate mining's impacts on any resource.
- (3) — Economic and Community Development. The plan shall include a basic statement as to the community attitude toward growth:
- (A) — Local governments shall discuss the types of development which are to be encouraged. In this instance, the term "development" shall include residential, commercial, industrial and institutional development. The plan shall consider the costs and benefits of redevelopment of older areas as well as the creation of new subdivisions or industrial parks.
- (B) — At a minimum, the plan shall contain policy statements on the following economic and community development issues (if relevant):
- (i) — types and locations of industries desired (including discussion of specific sites or standards for sites in general) and local assets desirable to such industries;
 - (ii) — local commitment to providing services to development;
 - (iii) — types of urban growth patterns desired (including policy regarding development away from existing urban clusters);
 - (iv) — types, densities, location, units per acre, etc. of anticipated residential development and services necessary to support such development including an assessment of how solid waste disposal will be managed;
 - (v) — redevelopment of developed areas including relocation of structures endangered by erosion, paying particular attention to the extent
- (vi) — existing zoning allows more intense redevelopment than current uses;
 - (vi) — commitment to state and federal programs (for example erosion control, highway improvements, port facilities, dredging, military facilities, housing rehabilitation, community development block grants, housing for low and moderate income level citizens, water and sewer installation, and rural water systems);
 - (vii) — assistance to channel maintenance, interstate waterways, and beach nourishment projects (including financial aid, provision of borrow and spoil areas, provision of easements for work);
 - (viii) — energy facility siting and development to include specific reference to electric generating plants, both inshore and outer continental shelf (OCS) exploration or development to address the possibilities of refineries, storage, transshipment and the potential negative environmental effect from blowouts, spills etc.;
 - (ix) — tourism;
 - (x) — public beach and waterfront access. Policies on type and location should be based on an inventory of all publicly owned properties, to include street ends appropriate for access development, all privately owned parcels appropriate for access development, and privately owned parcels where access occurs customarily. State guidelines for beach access locations as expressed in 07M .0303 shall also be considered in site location. These access areas should be indicated on maps in the Land Use Plan and shall provide for the diverse needs of the permanent and peak seasonal populations as well as day visitors.

- (C) — In addition to specific policy statements on issues listed in this Paragraph, local governments should pay particular attention in policy development to observed land use trends such as: in inland areas significant changes from lower intensity to higher intensity uses, conversion of agricultural and forest uses to residential or commercial, or from forest to agricultural. Land use trends in estuarine, river and sound areas include residential waterfront development and increases in density of waterfront residential uses; marina, moorings, or dry stack facility development and expansion, floating homes and public and private services provided to support higher intensity uses and the cumulative impact of such trends on water quality. Oceanfront and barrier islands should address the adequacy of existing and planned transportation routes, bridges, water and sewer systems, and other carrying capacity features and local ordinances to accommodate expected and potential changes in land use intensities and overall growth.
- (4) — Continuing Public Participation. Local governments shall discuss the means by which public involvement in the Land Use Plan update will be encouraged. The public involvement policies shall be consistent with the concepts set forth in Rule .0215 of this Section. At a minimum, the plan shall address the following public participation issues:
- (A) — description of means to be used for public education on planning issues;
- (B) — description of means to be used for continuing public participation in planning; and
- (C) — description of means to be used for obtaining citizen input in developing Land Use Plan policy statements.
- (5) — Storm Hazard Mitigation, Post-Disaster Recovery and Evacuation Plans:
- (A) — Local governments shall adopt local policies dealing with coastal storm hazard mitigation. The purpose of these policies is to guide the development of the community so that the risk of damage to property and the threat of harm to human life from coastal storms is kept to a minimum level.
- (i) — The following information shall be included in the plan:
- (I) — A description of the likely conditions that the community will experience during a coastal storm; e.g. high winds, storm surge, flooding, wave action, erosion, etc.
- (II) — A composite hazards map showing the hazardous areas within the planning jurisdiction. The local government should use the best available information including flood insurance rate maps and other data from the Division of Emergency Management. Each hazardous area should be described in terms of type of hazard that it is likely to be subjected to and the relative severity of risk present.
- (III) — An existing land use inventory for each of the most hazardous areas which portrays the amount of existing development at risk. The intent of this provision can be achieved by overlaying each hazard area upon the existing land use map.
- (ii) — The following coastal storm hazard mitigation policies shall be included in the plan:
- (I) — Policies intended to mitigate the effects of high winds, storm surge, flooding, wave action, erosion, etc.;
- (II) — Policies intended to discourage development, especially high density or large structures in the

- ~~(III) Policies dealing with public acquisition of land in the most hazardous areas;~~
- ~~(IV) Policies dealing with evacuation. While it is recognized that evacuation is the responsibility of county emergency management personnel and the Department of Crime Control and Public Safety, Division of Emergency Management, each Land Use Plan should consider the impact of the land use and other policies on evacuation problems. The following should be considered: decreasing density so as to decrease the number of people needing to evacuate; requiring that major residential development (including motels, condominiums and subdivisions of over 30 units) provide adequate emergency shelter for their occupants; ensuring that new public buildings can be adequately used as shelters; participation in a regional evacuation planning process.~~

~~(B) Post-disaster reconstruction policies are also required as part of the Land Use Plan in order to guide development during the reconstruction period following a disaster so that the community, as it is rebuilt, is less vulnerable to coastal storms than it was before the disaster.~~

- The following should be considered in these policies:
- ~~(i) The county emergency management plan, especially the preparation and response sections;~~
 - ~~(ii) Local policies which will direct reconstruction over a longer period of time;~~
 - ~~(iii) The establishment of a "recovery task force" to oversee the reconstruction process and any policy issues which might arise after a storm disaster;~~
 - ~~(iv) The establishment of a schedule for staging and permitting repairs, including the imposition of moratoria, according to established priorities assigned to the restoration of essential services, minor repairs, major repairs and new development; and~~
 - ~~(v) The establishment of policies for repair or replacement of public infrastructure, including relocation to less hazardous areas.~~

~~(6) The Coastal Resources Commission, in consultation with the local government, may, at the beginning of the planning process, specify other issues that must be addressed in particular local Land Use Plans, and the local government may to develop policies on issues that are of particular local importance.~~

~~(b) For each of the policy issues listed in Paragraph (a)(1) through (6) of this Rule, the Land Use Plan shall contain the following: a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government, and a description of how the local policy (or group of policies) will be implemented.~~

~~(1) Definition of Issues. The local government shall consider, with the aid of the planning board and citizen advisory groups, those issues which will affect the community during the 10-year planning period.~~

~~(2) Discussion of Possible Policy Alternatives. Alternative scenarios shall be discussed for each land use issue, based upon different population projections and different types of public policy. The costs and benefits to the community shall be analyzed, including cost of providing services and increased revenues from potential development both for the initial action and for the long-term consequences.~~

~~(3) Selection of Policies. The local government shall select policies based upon the data analysis and a discussion of the best possible~~

alternative for each land use issue. The policies that are selected shall be indicated clearly in the plan. The policies shall be reasonable and achievable by the local government within the fiscal constraints and the management system which the local government has established and within the 10-year planning period.

(4) ~~Proposed Implementation Methods.~~

(A) ~~The local government shall discuss various methods of achieving each of the policies selected for adoption. The Land Use Plan shall include a description of the methods by which the local government intends to implement its policy choices.~~

~~Actions which will need to be taken shall be described and a proposed time schedule for these necessary actions shall be outlined.~~

(B) ~~The Land Use Plan should include an analysis of the consistency of all existing land use ordinances and capital improvement plans and budgets with the Land Use Plan. The plan should also discuss the local administrative ability and timing priority for carrying out the policy.~~

~~(c) In the policy discussion process, the local governments shall review and consider all current land use and related plans, policies and regulations which affect the planning jurisdiction as identified in Rule .0206(d) of this Section whether prepared by the local government or another governmental unit. Meetings should be held with the planning and governing boards of all adjoining planning jurisdictions to discuss planning concerns of mutual interest. The plan shall include a list of these joint meetings and the results of those meetings.~~

~~(d) All policies adopted by the local government as a part of the Land Use Plan shall be consistent with the overall coastal policy adopted by the Coastal Resources Commission.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0213 LAND CLASSIFICATION

~~(a) A land classification system has been devised as a means of assisting in the implementation of the local policies adopted pursuant to Rule .0212 of this Section. By delineating land classes on a map, local government and its citizens can specify those areas where certain policies (local, state and federal) will apply. The land classification system should be supported by and consistent with zoning, subdivision and other local growth management tools. Although specific areas are outlined on a land classification map, land classification is merely a tool to help implement policies and not, in the strict sense of the term, a regulatory mechanism. Boundaries of each land classification should be described in the text as clearly as possible. To further clarify its intent, the local government should describe how land classification is linked to policy.~~

~~(b) The final land classification map included in the Land Use Plan shall be clear and legible. This map may be a smaller version of the final map prepared by the planning jurisdiction.~~

~~One copy of the land classification map which is suitable for entry into a geographic information system (GIS) shall be submitted to the Division of Coastal Management. This map shall reference a standard coordinate system (latitude/longitude or NC State Plane) and have a minimum map scale of 1:100,000 for counties. Higher detail maps should be used for municipal land classification maps. Where feasible, a digital version of the map shall be submitted.~~

~~(c) The land classification system provides a framework to be used by local governments to identify the future use of all lands. The designation of land classes allows the local government to illustrate their policy statements as to where and to what intensity they want growth to occur, and where they want to conserve natural and cultural resources by guiding growth.~~

~~(d) The land classification system includes seven classes: Developed, Urban Transition, Limited Transition, Community, Rural, Rural with Services, and Conservation. The local government may subdivide these classes into more specific subclasses but any subclass should be able to aggregate back to the original class. Some classes may not apply to each local government; for example, the Community or Rural class may not apply in an incorporated municipality. Local governments may make some distinction between Urban Transition areas, which are intended to reflect intensely developing areas with the full range of urban services to be supplied, and Limited Transition areas that are less intensely developed, may have private services and are frequently located in a rural landscape. Both of these classes are described later in this Rule.~~

~~(e) In applying the land classification system the local government should give particular attention to how, where and when development of certain types and intensity will be encouraged or discouraged, based upon the community services analysis conducted in Rule .0210(b) of this Section. Urban land uses and higher intensity uses which presently require the traditional urban services should be directed to lands classified as Developed. Areas developing or anticipated to develop at urban densities which will eventually require urban services should be directed to lands classified as Transition. Low density development in settlements which will not require sewer services should be directed to areas classified as Community. Agriculture, forestry, mineral extraction and other similar low intensity uses and very low density residential uses should be directed to lands classified as Rural. Generally, public or private water or sewer systems will not be provided in areas classified rural as an incentive for intense development. The land use classification should reflect the future water and wastewater service areas assumed in any water supply plan appendix.~~

~~(1) ~~Developed:~~~~

~~(A) ~~Purpose. The purpose of the Developed class is to provide for continued intensive development and redevelopment of existing cities, towns and their urban environs.~~~~

~~(B) ~~Description and characteristics. Areas meeting the intent of the Developed classification are currently urban in character where minimal undeveloped land remains and have in place, or are scheduled for the timely provision of, the usual municipal or public services. Urban~~~~

in character includes mixed land uses such as residential, commercial, industrial, institutional and other uses at high to moderate densities. Services include water, sewer, recreational facilities, streets and roads, police and fire protection. In some instances an area may not have all the traditional urban services in place, but if it otherwise has a developed character and is scheduled for the timely provision of these services, it still meets the intent of the developed classification. Areas developed for predominantly residential purposes meet the intent of this classification if they exhibit:

- (i) a density of three or more dwelling units per acre; or
- (ii) a majority of lots of 15,000 square feet or less, which are provided or scheduled to be provided with the traditional urban services; or
- (iii) permanent population densities that are high and seasonal populations that may swell significantly.

(C) Discussion. Local governments may subdivide the Developed class into subclasses such as Developed/Multifamily Residential, Developed/Single-family Residential, Developed/Commercial and Developed/Industrial. In applying the Developed class or subclasses, the local government should discuss how, when and where it will provide the services necessary to support the needs of an urban area. This class is designed to illustrate urban intensity development and services necessary to support it and should be applied to existing cities and towns and intense development within the extraterritorial planning jurisdictional area (if any). The Developed class is one of two classes the local government should apply to areas containing intense urban development requiring urban services.

(2) Urban Transition:

- (A) Purpose. The purpose of the Urban Transition class is to provide for future intensive urban development on lands that are suitable and that will be provided with the necessary urban services to support intense urban development.
- (B) Description and Characteristics. Areas meeting the intent of the Urban

Transition classification are presently being developed for urban purposes or will be developed in the next five to ten years to accommodate anticipated population and urban growth. These areas are in, or will be in "transition" state of development going from lower intensity uses to higher intensity uses and as such will eventually require urban services. Examples of areas meeting the intent of this class are lands included within municipal extraterritorial planning boundaries and areas being considered for annexation.

(i) Areas classified Urban Transition will provide lands for intensive urban growth when lands in the Developed class are not available. Urban Transition lands must be able to support urban development by being generally free of physical limitations and be served or readily served by urban services. Urban development includes mixed land uses such as residential, commercial, institutional, industrial and other uses at or approaching high to moderate densities. Urban services include water, sewer, streets and roads, police and fire protection that will be made available at the time development occurs or soon thereafter. Permanent population densities in this class will be high and the seasonal population may swell significantly.

(ii) In choosing land for the Urban Transition class, such land should not include: Areas with severe physical limitations which would make the provision of urban services difficult or impossible, lands which meet the definition of conservation, lands of special value (unless no other alternative exists) such as productive and unique agricultural lands, forest lands, potentially valuable mineral deposits, water supply watersheds, scenic

and tourist resources including archaeological sites, habitat for important wildlife species, areas subject to frequent flooding, areas important for environmental or scientific values, lands where urban development might destroy or damage natural systems or processes of more than local concern, or lands where intense development might result in undue risk to life and property from natural or existing manmade hazards.

(iii) ~~Even though AEC standards occasionally permit Urban Transition type development on a lot-by-lot basis within the various AECs, this classification should not be applied to any AEC.~~

(iv) ~~Areas that are predominantly residential meet the intent of this class if:~~

(I) ~~they are approaching three dwelling units per acre, or~~

(II) ~~a majority of the lots are 15,000 square feet or less and will be provided with essential urban services to support this high density development, or~~

(III) ~~are contiguous to existing developed municipal areas.~~

(3) ~~Limited Transition:~~

(A) ~~Purpose. The purpose of the Limited Transition class is to provide for development in areas that will have some services, but are suitable for lower densities than those associated with the Urban Transition class, or are geographically remote from existing towns and municipalities.~~

(B) ~~Description and Characteristics. Areas meeting the intent of this class will experience increased development during the planning period. They will be in a state of development necessitating some municipal type services. These areas are of modest densities and often suitable for the provision of closed~~

~~water systems rather than individual wells.~~

(i) ~~Areas classified Limited Transition will provide controlled development with services, but may not be on lands that are suitable for traditional high intensity urban development normally associated with sewers or other services. These may be lands with physical limitations or areas near valuable estuarine waters or other fragile natural systems. Sewers and other services may be provided because such services are already in the area or readily available nearby, because the lands are unsuitable for septic tanks or the cumulative impact of septic tanks may negatively impact significant public resources. Self-contained, large, retirement/vacation developments in otherwise rural areas would meet the intent of this class.~~

(ii) ~~The Limited Transition class is intended for predominately residential development with densities of three units per acre or less, or where the majority of lots are 15,000 square feet or greater. In many areas, lower densities may be necessary and should be discussed. Clustering or development associated with Planned Unit Developments may be appropriate in the Limited Transition class;~~

(iii) ~~Areas which meet the definition of the Conservation class should not be classified Limited Transition; and~~

(iv) ~~Due to its very nature, the Limited Transition land classification may be controversial. As such, if a local government chooses to use this class, it shall describe the circumstances making this classification necessary and shall also describe how this class will help the local government achieve both its economic~~

development and natural resources protection policies. This discussion shall include statements as to why lands included in this classification are appropriate for development which necessitates the provision of services.

(C) Discussion. As sewer and other services become more widespread, they are frequently extended to areas that are not suitable for high density urban development. The use of such services generally increases environmental protection in these areas if the density of development remains relatively low. The Limited Transition class is intended to provide for appropriate moderate densities of development with the benefits of services. However, the reliability of services such as sewage treatment systems is critical in these areas. If the local government intends to allow the private provision of urban services such as sewage systems and garbage collection, then the local government should require special assurances that these private services will reliably protect the public resources and avoid unnecessary public expenses. Both the Urban Transition and Limited Transition classes are designed to illustrate emerging and developing areas where some appropriate level of services are required.

(4) Community:

- (A) Purpose. The purpose of the Community class is to provide for clustered, mixed land uses at low densities to help meet the housing, shopping, employment and other needs in rural counties.
- (B) Description and Characteristics. Areas meeting the intent of the Community class are presently developed at low densities which are suitable for private septic tank use. These areas are clustered residential or commercial land uses which provide both low intensity shopping and housing opportunities and provide a local social sense of a "community". These communities are generally small and some are not incorporated. Very limited municipal type services such as fire protection and community water may be available, but municipal type sewer

systems are not to be provided as a catalyst for future development. In some unusual cases sewer systems may be possible, but only to correct an existing or projected public health hazard. Areas developed in a low density fashion in small, dispersed clusters in a larger rural county landscape with very limited or no water and sewer services meet the intent of this class.

(C) Discussion. The Community class applies to clustered low intensity development in a rural landscape. This development is usually associated with crossroads in counties. Some "communities" may have or may require municipal type services to avert an existing or anticipated health problem. Even though limited services may be available, these areas should not be shown in the higher intensity land classes, as the major characteristic which distinguishes the Community class from the Developed and Transition classes is that services are not provided to stimulate intense development in a rural setting, but rather to neutralize or avert health problems. Due to the small size of most communities, they will appear as small areas in a dispersed pattern on the county land classification map. This class illustrates small, dispersed groupings of housing and commercial land uses forming "crossroad" communities in a rural landscape.

(5) Rural:

- (A) Purpose. The Rural class is to provide for agriculture, forestry, mineral extraction and other allied uses traditionally associated with an agrarian region. Other land uses, due to their noxious or hazardous nature and negative impacts on adjacent uses may also be appropriate here if sited in a manner that minimizes their negative effect on surrounding land uses or natural resources. Examples include energy generating plants; refining plants, airports, landfills, sewage treatment facilities; fuel storage tanks and other industrial type uses. Very low density dispersed residential uses on large lots with on site water and sewer are consistent with the intent of the rural class. Development in this class should be as compatible with resource production as possible.

(B) — Description and Characteristics. Areas meeting the intent of the Rural classification are appropriate for or presently used for agriculture, forestry, mineral extraction and other uses, that due to their hazardous or noxious nature, should be located in a relatively isolated and undeveloped area. Very low density dispersed, single family residential uses are also appropriate within rural areas where lot sizes are large and where densities do not require the provision of urban type services. Private septic tanks and wells are the primary on-site services available to support residential development, but fire, rescue squad and sheriff protection may also be available. Population densities will be very low.

(C) — Discussion. The Rural class is the broadest of the five classes and will generally constitute the major land class on county land classification maps. Local governments may subdivide the Rural class into subclasses such as Rural/Agriculture, Rural/Forestry etc. in order to illustrate where these basic rural activities will occur.

(6) — Rural with Services.

(A) — Purpose. The Rural with Services class is to provide for very low density land uses including residential use where limited water services are provided in order to avert an existing or projected health problem. Development within this class should be low intensity in order to maintain a rural character. Rural water systems, such as those funded by Farmers Home Administration, are or may be available in these areas due to the need to avert poor water quality problems. These systems, however, should be designed to serve a limited number of customers and should not serve as a catalyst for future higher intensity development.

(B) — Description and Characteristics. Areas meeting the intent of this class are appropriate for very low intensity residential uses, where lot sizes are large, and where the provision of services will not disrupt the primary rural character of the landscape. Private wells and septic tank services may exist, but most development is supported by a closed water system. Other services such as sheriff protection and rural or volunteer fire

protection and emergency rescue etc. may also be available.

(C) — Discussion. This class is intended to be applied where the local government has provided, or intends to provide very limited water services to avert a known or anticipated health problem in a predominantly larger agrarian region.

(7) — Conservation:

(A) — Purpose. The purpose of the Conservation class is to provide for the effective long-term management and protection of significant, limited, or irreplaceable areas. Management is needed due to the natural, cultural, recreational, scenic or natural productive values of both local and more than local concern.

(B) — Description and Characteristics. Areas meeting the intent of this classification that should be considered for inclusion include:

(i) — Areas of Environmental Concern (AECs), including but not limited to public trust waters, estuarine waters, coastal wetlands etc., as identified in 15A NCAC 07H;

(ii) — other similar lands, environmentally significant because of their natural role in the integrity of the coastal region, including but are not limited to wetlands identified on Division of Coastal Management wetland maps, other wetlands, areas that are or have a high probability of providing wildlife habitat, forest lands that are essentially undeveloped and lands which otherwise contain significant productive, natural, scenic, cultural or recreational resources.

(C) — Discussion. The Conservation class is designed to illustrate the natural, productive, scenic, cultural and recreational features of the coastal zone which make the region a desirable place in which to live, work and visit. As such, the Conservation class should be applied to areas that because of their unique, productive, limited, cultural or natural features should be either not developed at all (preserved), or if developed, done so

in an extremely limited and cautious fashion. At a minimum all AECs as defined in 15A NCAC 07H should be included in this class and the Land Use Plan should so state. The local government may and is strongly urged to include other similar areas afforded some level of protection by state or federal agencies, such as "404 wetlands". As AECs should be included in the Conservation class, the local government should acknowledge the distinctions among the various uses the Coastal Management Program permits within each AEC category. The local government may develop its own more restrictive standards for AECs as the state's are considered minimum. At a minimum each plan should include language such as:

- (i) ~~coastal wetlands~~—These areas are the most restrictive of all AECs and very few uses are permitted therein; the highest priority is for their preservation as they are well documented in their contribution to the natural productivity of the coastal area.
- (ii) ~~ocean hazard AECs~~—These areas include V zones and ocean erodible areas and are known for their vulnerability to storms. Some limited uses are permitted within, even though subject to storm risks. Some development is permitted in these areas if it is well managed and carefully sited to minimize risks to life and property.
- (iii) ~~estuarine shoreline AECs~~—These areas are located adjacent to estuarine waters AECs and are known for their contribution to the natural productivity of the waters close by. Many uses may be permitted as long as the 30 percent impervious rule is met and development is well managed on individual sites to ensure minimal degradation.
- (iv) ~~other similar lands that are afforded some protection by another agency, such as "404 wetlands" where use and~~

- performance standards of that agency will apply.
- (v) ~~other unique lands known for their natural, scenic, historical, cultural or hazardous nature. These areas might include areas identified by the Natural Heritage Program, Pakistanis, savannas, tracts of native forests, undeveloped shorelines etc. When these areas are included in the conservation class the local government should describe the types of uses it deems appropriate, if any, within each area and under what circumstances those uses might be appropriate.~~

Urban services, public or private, should not be provided in these areas as a catalyst to stimulate intense development. In most cases limited on-site services will adequately support any limited development within this class and will also protect the very features which justify the area's inclusion in the Conservation class. Even though AEC standards occasionally permit urban type development on a lot by lot basis within the various AECs and services are occasionally provided, this is the exception rather than the rule. The primary intent of the Conservation class is to provide protection for the resources included therein. Mapping of AECs in the Conservation class on the local government's land classification map should be accomplished with the understanding the AECs are intensively defined by their characteristics in 15A NCAC 07H, and therefore maps only indicate approximate locations and are not definitive enough for site specific regulation purposes. Policy development in the Land use Plan should acknowledge the intent of this class and policies should be consistent with the function of areas shown in the Conservation class.

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0214 INTERGOVERNMENTAL COORDINATION AND IMPLEMENTATION

(a) ~~The statements of local policy and the land classification map will serve as the basic tools for coordinating numerous policies, standards, regulations and other governmental activities at the local, state and federal levels. Such coordination may be described by three applications:~~

- (1) ~~The local land use policies and the land classification map encourage coordination and consistency between local policies and the state and federal governments actions. The local Land Use Plan is the principal document for guiding governmental decisions and activities which affect land uses in the coastal area.~~
- (2) ~~The local Land Use Plan provides a framework for budgeting, planning and for the provision and expansion of community~~

facilities such as water and sewer systems, schools and roads.

- ~~(3) The local Land Use Plan aids in better coordination of regulatory policies and decisions by describing local land use policies and designating specific areas for certain types of activities.~~

~~(b) As specified in Rule .0212(c) of this Section, the local government shall ensure that issues and concerns of adjoining planning jurisdictions shall be discussed. This is particularly important when one local government's development policies are inconsistent with those of the adjoining jurisdiction. Meaningful attempts to resolve such conflicts shall be made between the jurisdictions.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0215 PUBLIC PARTICIPATION

~~(a) Local governments shall employ a variety of educational efforts and participation techniques to assure that all segments of the community have a full and adequate opportunity to participate in all stages of plan development. Educational efforts may include, but are not limited to newspaper articles, public service announcements, direct mail, etc. Participatory techniques may include, but are not limited to, neighborhood meetings, questionnaires, newsletters and presentations to civic, business, church and similar groups. To encourage public participation at meetings, the public shall be informed of each public meeting in multiple ways, rather than relying only on a legal notice.~~

~~(b) For all Land Use Plans, a concise Citizen Participation Plan shall be prepared and adopted by the local government at the beginning of the planning process. The Citizen Participation Plan shall be included in the Land Use Plan. At a minimum, the plan shall include the following:~~

- ~~(1) A designation of the principal local board, agency or department responsible for preparing or updating the Land Use Plan.~~
- ~~(2) An explanation of the various means of soliciting public participation such as citizen surveys, questionnaires, informational brochures, community outreach, etc.~~
- ~~(3) A schedule of the various opportunities for public information and participation with specific dates.~~
- ~~(4) An explanation of how the public will be notified of its opportunities for input.~~

~~(c) A public hearing or a series of meetings shall be conducted at the beginning of the update process. During the meeting the local government shall discuss the statements of local policy found in the current Land Use Plan and the effect of those policies on the community. In addition, the local government will explain the process by which it will solicit the views of a wide cross section of citizens in the development of undated policy statements.~~

~~(d) The Citizen Participation Plan shall ensure that all economic, social, ethnic and cultural view points are considered as much as possible in the development or update of the Land Use Plan. Where communities have a significant number of non-resident land owners, special efforts should be made by the~~

~~local government to encourage and facilitate participation of non-residents in the planning process.~~

~~(e) The Land Use Plan shall include an assessment of the effectiveness and adequacy of the citizen participation effort and a description of how local elected officials were involved in all aspects of plan development.~~

~~(f) While final policy decisions will be made by local elected officials, the Citizen Participation Plan is designed to provide the public the opportunity to voice its views on all required policy items.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0216 PLAN REVIEW AND APPROVAL

~~(a) The Coastal Resources Commission will review all plans for technical accuracy, internal consistency, and consistency with other plans. In the event the Commission questions the accuracy of statements, or data contained in a plan, the Commission will withhold approval of the plan and request that the local government support the questionable statement or data. After considering the supporting information, the Commission may reject the plan upon a finding that the statement or data set forth in the plan is not supported by the information supplied by the local government. In the event the local government does not support the questionable statement or data within 30 days the Commission will reject the plan.~~

~~(b) In the event the Commission determines that a plan is internally inconsistent or is inconsistent with other local plans or includes inaccurate data, the Commission may request the local government(s) to provide data to resolve or support the alleged internal inconsistencies or the inconsistencies between plans. After considering the supporting information, the Commission may reject the plan upon finding that the inconsistencies have not been resolved.~~

~~(c) State and federal agencies with technical expertise in land use planning and related fields, the Coastal Resources Advisory Council, regional councils of government, and other interested parties will be called upon to participate in the Land Use Plan review process. The participation in the review process of state and federal agencies that have activities in the coastal area is especially important so that they can determine if their concerns are being adequately addressed. The Commission shall consider the recommendations of these parties in determining whether to approve or disapprove local Land Use Plans.~~

~~(d) In addition to the basis for withholding or denying approval of Land Use Plans cited above, the Commission shall not approve any plan which:~~

- ~~(1) is inconsistent with the current North Carolina Coastal Management Plan (other than the Land Use Plan under consideration),~~
- ~~(2) is inconsistent with the Rules of the Commission, or~~
- ~~(3) violates state or federal law or policy.~~

~~(e) To assist in plan review, the Chairman of the Commission will designate one member of the Commission or the Coastal Resources Advisory Council who shall personally review the planning process and the plan and shall report his/her observations and recommendations to the Commission during the plan approval proceedings.~~

SECTION .0400 – LAND USE PLAN AMENDMENT

15A NCAC 07B .0401 LAND USE PLAN AMENDMENT

~~The Land Use Plan may be amended as a whole by a single resolution or in parts by successive resolutions. The successive resolutions may address geographical sections, county divisions, or functional units of subject matter.~~

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0402 PUBLIC HEARING REQUIRED

~~(a) The Land Use Plan may be amended only after a properly held public hearing. Notice of the public hearing shall be posted at least 30 days prior to the public hearing and must state the date, time, place, proposed action, and that copies of the amendment may be viewed at a particular office in the county courthouse or town hall during designated hours. The notice must appear at least once in a newspaper of general circulation in the planning jurisdiction. The notice may also be posted in other public facilities such as county or city office buildings, post offices or similar locations.~~

~~(b) Copies of the proposed amendment or update shall be available at the time notice is provided. Minor changes after hearing are acceptable without additional hearings unless the changes are so significant that the original notice would not have provided adequate notice to the public of the subject matter and potential action. If there are significant changes to a proposed amendment the local government shall hold another public hearing advertised in the same manner as the original that advises of the same subject matter to be considered.~~

~~(c) Local governments are encouraged to adopt their plan amendments expeditiously following the close of the public hearing.~~

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0403 NOTICE TO COASTAL RESOURCES COMMISSION

~~(a) The local government proposing an amendment to its Land Use Plan shall provide to the executive secretary of the Commission or his designee written notice of the public hearing, a copy of the proposed amendment, and the reasons for the amendment no less than 30 days prior to the public hearing. After the public hearing, the local government shall provide the executive secretary or his designee with a copy of the amendment as adopted.~~

~~(b) The local government shall submit the full text of the proposed amendment in full page units as it would appear in the Land Use Plan if adopted in the proposed form. Any maps (such as the land classification map) that will be affected by the amendment shall also be submitted as they would appear if the proposed amendment were adopted. If the proposed amendment includes reclassifying an area from a lower intensity land class which does not presently require urban type services to a higher intensity class which will necessitate urban services, then the local government shall describe, as part of the amendment, how, when and where these services will be provided in order to support such a reclassification.~~

~~Local governments that presently enforce the minimum land management tools (zoning and subdivision regulations, or planned unit development ordinances) and also supply other urban services such as water, sewer, fire and police protection, solid waste disposal, transportation network and schools, shall so state, and as part of any plan amendment proposal shall assure the Commission that the local government has or will provide for adequate services to support any development that will occur. As part of this assurance, the local government shall discuss the circumstances making the amendment necessary and shall also describe how this amendment will help the local government implement its stated policies as contained in the Land Use Plan. This discussion shall also include an examination of the availability of vacant land presently in the land classification being sought for in the proposed amendment and why the land proposed for reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.~~

~~(2) Local governments that are not presently enforcing the minimum land management tools (zoning and subdivision regulations; or planned unit development ordinances) and that do not provide public services such as water, sewer, fire and police protection, solid waste disposal, transportation network and schools, shall so state as part of any proposed plan amendment. If the local government intends to allow these services to be provided privately, then a "demand supply" analysis is required as part of any plan amendment proposed. This analysis shall be thoroughly discussed at the local public hearing prior to local action and shall be available for public review during the 30 day public hearing notice period as part of the notice and the notice shall so state. This analysis shall also include information as to the whole range of uses permitted within the proposed land classification and shall discuss potential impacts associated with those uses, including the most dense possible development therein. At a minimum, the demand supply analysis shall discuss: water, sewer, fire and police protection, solid waste disposal, transportation impacts and school impacts. Potential impacts on the immediate environment shall also be discussed. As part of any proposed amendment, the local government shall also discuss the circumstances making the amendment necessary and shall also describe how the amendment will help the local government achieve and implement its stated policies as contained in the Land Use Plan. This discussion shall also include an~~

~~examination of the availability of vacant land presently in the land classification being sought, and why the proposed reclassification is more appropriate for intense development than that presently vacant and currently classed for intense development.~~

~~(c) The local government shall provide the executive secretary of the Commission with a copy of the amended text or maps, or certification of adoption as proposed within seven days after adoption. If the adopted amendment varies from the proposed revision, the adopted amendment shall be submitted in the manner described in Paragraph (b) of this Rule for proposed amendments.~~

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0404 WAIVER OF FORMAL REVIEW BY THE CRC

~~(a) When the local government deems a proposed amendment sufficiently insubstantial, it shall request a waiver of the formal amendment procedure when giving notice to the executive secretary. The executive secretary shall make such determination in accordance with Rule .0406 of this Subchapter and mail written notification to the local government no later than two weeks after receipt of notice.~~

~~(b) If the waiver is granted and the amendment is adopted as proposed, it shall become final upon local adoption and is not subject to Commission review as noted in Rule .0405 of this Section. The local government shall provide the executive secretary with a certification that the amendment was adopted as proposed within seven days after adoption.~~

~~(c) If the waiver is granted and the amendment is not adopted as proposed, the adopted amendment shall be submitted to the executive secretary, shall be subject to Commission review as noted in Rule .0405 of this Section, and shall become final only after such Commission review.~~

~~(d) If the request for waiver is denied by the executive secretary, the waiver provisions of the rules in this Section shall not apply. The local amendment finally adopted shall be reviewed by the Commission in accordance with the regular plan amendment process.~~

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0405 CONSISTENCY AND ADOPTION

~~(a) The amended Land Use Plan must be consistent with the Commission's Land Use Planning Guidelines (15A NCAC 7B) and insofar as possible, with the Land Use Plans of adjacent local governments.~~

~~(b) The Commission shall review locally adopted Land Use Plan amendments that are not subject to the waiver provisions. The local government shall submit in writing its proposed plan amendment to the executive secretary or his designee at least 21 days prior to the meeting at which the local government intends for the Commission to consider the change. If adequate time is not available for review of the amendment, the local government shall be advised in writing by the executive secretary of the date at which the Commission anticipates review of the amendment. Public comments are invited during the Commission's review of the proposed amendment.~~

~~(1) The Commission shall approve, disapprove, or conditionally approve the proposed Land Use Plan amendment following the procedure and conditions specified for Land Use Plans in Rule .0216 of this Subchapter.~~

~~(2) If the amendment is disapproved or conditionally approved, the Commission shall provide reasons for such action to the local government with suggestions as to how the amendment might be changed so approval could be granted.~~

~~(3) When the local government complies with the imposed condition for a conditionally approved plan, then plan approval is automatic with no further action needed by the Commission.~~

~~(c) If additional time is needed for review of a plan amendment, the local government shall be advised in writing according to Paragraph (b) of this Rule. Otherwise failure of the Commission to take negative action at its first regularly scheduled meeting after notification to the executive secretary of the adopted amendment indicates compliance with these standards and commission approval of the amendment.~~

~~(d) Any amendments to the text or maps of the Land Use Plan shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and Commission approval. The amended Land Use Plan shall be maintained as required by G.S. 113A-110(g).~~

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0406 STANDARDS FOR WAIVER OF FORMAL REVIEW

~~The executive secretary's authority to waive formal review of proposed Land Use Plan amendments is limited to the following instances:~~

~~(1) minor changes in policy statements or objectives that are the result of public participation;~~

~~(2) modification of any classification that does not affect Transition or Conservation Classes;~~

~~(3) new data compilations and associated statistical adjustments that do not suggest major substantive revisions;~~

~~(4) more detailed identification of existing land uses or additional maps of existing or natural conditions;~~

~~(5) identification of fragile areas to be brought under locally initiated protection;~~

~~(6) changes in land classifications to reflect new designations or deletions of AECs; and~~

~~(7) changes certified by the executive secretary to be consistent with specific Commission comments.~~

Authority G.S. 113A-110; 113A-124.

SECTION .0500 – LAND USE PLAN UPDATE PROCESS

15A NCAC 07B .0501 UPDATE REQUIRED

~~The local Land Use Plan shall be updated at least every five years or in accordance with a schedule established by the Commission. If the plan is not updated by the local government and submitted for reapproval to the Commission within five years of adoption, the plans may be voided and an updated plan may be prepared by the Commission for use in that local jurisdiction. Plans may be updated more frequently at the desire of the local government.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0502 PURPOSE OF UPDATE

~~The major purpose of updating local Land Use Plans is for the local government to identify and analyze emerging community issues and problems, and to reexamine policies to decide whether local land use policies have been effective and whether they should be continued or changed. The following objectives shall be met by all planning jurisdictions in their plan update:~~

- ~~(1) to further define and refine local policies and issues (as described in Rule .0212 of this Subchapter);~~
- ~~(2) to further examine and refine the land classification system and the local land classification map (as described in Rule .0213 of this Subchapter);~~
- ~~(3) to assess the effectiveness of the existing Land Use Plan and its implementation;~~
- ~~(4) to further explore implementation procedures; and~~
- ~~(5) to promote a better understanding of the land use planning process.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0503 DATA COLLECTION AND ANALYSIS

~~The Land Use Plan update process shall include the collection and analysis of any new land use related data that has become available since the preparation of the current Land Use Plan. In addition to the types of data discussed in Rule .0206 of this Subchapter, the update shall include a discussion of the local government's experience in implementing the previous plan.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0504 AMENDMENTS TO MAPS

~~The map of existing land uses and the land classification map shall be amended to show changes in land use since the adoption of the current Land Use Plan. Maps which show only the changes in land use or land classification may be prepared as overlays to the existing maps.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0505 FORMAT OF PLAN UPDATE

~~(a) The Land Use Plan may be prepared in a loose-leaf or other easily changeable format to facilitate future updating, thereby allowing sections which are not being updated to be included without reduplicating the entire plan.~~

~~(b) An executive summary of the Land Use Plan and any amendments to the plan shall be prepared for widespread distribution to all interested parties.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0506 REVIEW AND APPROVAL

~~(a) The Commission shall approve, disapprove, or conditionally approve the Land Use Plan Update following the procedures and conditions specified for Land Use Plans in Rule .0216 of this Subchapter.~~

~~(b) If the update is disapproved or conditionally approved, the Commission shall provide reasons for such action to the local government with suggestions as to how the update might be changed so approval could be granted. Until the update is approved, the pre-existing certified plan shall remain in effect.~~

Authority G.S. 113A-107(a); 113A-124.

15A NCAC 07B .0507 OFFICIAL COPY OF PLAN

~~An official copy of the locally adopted and state certified Land Use Plan including all amendments and updates, shall be kept on file by the Commission and the local government. County local governments shall exchange certified plans both with contiguous counties and municipalities within its borders and each municipality shall also exchange its certified plan with the county in which it is located.~~

Authority G.S. 113A-107(a); 113A-124.

SECTION .0600 - INTRODUCTION

15A NCAC 07B .0601 AUTHORITY

Each of the 20 coastal counties is subject to the Coastal Area Management Act (CAMA) of 1974 land use planning provisions set forth in G.S. 113A, Article 7, Part 2, and is required to develop and adopt a land use plan. A municipality may develop and adopt a Land Use Plan (LUP). A municipality that chooses not to plan shall fall under the County LUP.

Authority G.S. 113A-110; 113A-124.

15A NCAC 07B .0602 PURPOSE

(a) Coastal Resources Commission (CRC) finds that CAMA establishes a cooperative program of coastal area management between local governments and the state. The CRC further finds that land use planning lies at the center of local government's involvement and gives the local leaders an opportunity and responsibility to establish and enforce policies to guide the development of their community. The CRC finds that land use planning offers the best chance for developing a common vision, goals, and policy for the future that balance the economic development and resource protection necessary for a healthy coast.

(b) Land use planning provides opportunities for careful technical analysis of the implications of various development alternatives, allows meaningful involvement of citizens in discussing the future of their community and provides a chance for local elected officials to make clear public policy choices for the future that help guide public and private investments. Land use planning is an important tool for addressing the many complicated issues that

face areas with high growth as well as those areas that are economically distressed and in great need of new employment opportunities. The planning processes to be followed in developing and adopting the plan as well as the required components in the final document are set forth in this Subchapter.

Authority G.S. 113A-107(a).

15A NCAC 07B .0603 REGULATORY USE OF THE LAND USE PLAN

(a) Neither the State nor a local government shall issue a CAMA permit for proposed development that is inconsistent with the policies of local land use plans approved by the CRC.

(b) Land use plans are also used by the state in determining whether federal activities shall be found consistent with the coastal management program.

(c) Local ordinances shall be consistent with the land use plan where these ordinances are applied in Areas of Environmental Concern (AECs).

Authority G.S. 113A-107(a); 113A-108; 113A-111.

SECTION .0700 - PROCESS REQUIREMENTS

15A NCAC 07B .0701 SCOPING OF PLANNING NEEDS

(a) Prior to submission of a grant application for the development or update of a CAMA land use plan a scoping meeting shall occur between the local government and the Division of Coastal Management (DCM). The scoping meeting shall determine the extent of planning and public participation needs and the type of plan to be produced and funded.

(b) The discussion and recommendations from the scoping meeting shall be presented at a regular meeting of the local governing board where action shall be taken to accept or modify the recommendations. Standard public meeting notification procedures common to the local government in question is sufficient public notice for these purposes, provided the notification specifically states that the scoping recommendations shall be discussed and acted upon. In addition, notification of the public meeting shall be provided to the DCM District Planner. Public input shall be accepted and considered at this meeting.

(c) In the case of existing plans, the scoping process shall take place during the fourth year after the last approval. The local government may request scoping before the fourth year if special circumstances are identified in the Implementation Status Report described in 15A NCAC 07B .0904 -Required Periodic Implementation Status Reports.

(d) If the local governing board, in conjunction with DCM, determines that no update is necessary, a public hearing on re-adoption of the current plan shall be held in the manner described in 15A NCAC 07B .0902 - Public Hearing and Local Adoption Requirements. After the public hearing, the local governing board may re-adopt the current plan if it meets the current guidelines, and submit the re-adopted plan along with the findings from the scoping process, to the CRC for re-approval. If the local governing board chooses not to re-adopt the current plan, it shall proceed with updating its plan as prescribed in

these rules. A local government shall, at a minimum, complete a new plan every 10 years.

(e) The community characteristics to be discussed during the scoping process shall include:

- (1) The capacity of the local government to administer the planning process;
- (2) Population growth rate as projected by the State Planning Office;
- (3) Development trends, such as number and type of building permits issued, number of lots subdivided, number of CAMA permits issued since approval of the current plan, and new and proposed industry;
- (4) Extent of Areas of Environmental Concern (AECs);
- (5) Water quality considerations including: Division of Water Quality (DWQ) classifications (outstanding resource waters, high quality waters) and current conditions (as per Basinwide Management Plans, Use Support List.); and Division of Marine Fisheries (DMF) primary nursery areas and current conditions (as per Coastal Habitat Protection Plans); and shellfishing waters and their current conditions;
- (6) Natural and manmade hazards and other issues affecting land use; and
- (7) Natural and environmental constraints (e.g. hydric soils) which affect land use.

(f) LUP updates not funded by DCM shall also comply with the scoping process.

Authority G.S. 113A-107; 113A-110.

15A NCAC 07B .0702 PUBLIC PARTICIPATION

(a) Local Governments are responsible for the development and implementation of a Citizen Participation Plan. Local governments shall employ a variety of educational efforts and participation techniques to assure that all socioeconomic segments of the community and non-resident property owners have opportunities to participate during plan development.

(b) Extent of Required Effort. Prior to the start of land use plan development, the local governing board shall develop and adopt a Citizen Participation Plan. Interested citizens shall have an opportunity to participate in the development of the LUP through oral and written comments as provided for in the Citizen Participation Plan. An adequate number of informational land use plan materials shall be provided at all meetings of the planning group. The Citizen Participation Plan shall be available to the public throughout the planning process. At a minimum, the Citizen Participation Plan shall include the following:

- (1) Designation of the principal local board, agency, department or appointed group which shall take the lead role in preparing or updating the Land Use Plan, including a contact name, address, and telephone number.
- (2) A specific date and time for an initial public information meeting or series of meetings.
 - (A) During the meeting(s) a local government updating its plan shall

discuss the statements of local policy in the current LUP, the effect of those policies on the community, and the ways the plan has been used to guide development during the past planning period. The local government shall explain the process by which it will report to the public and solicit the views of a wide cross-section of citizens in the development of updated policy statements.

(B) Written notice of the public information meeting(s) shall be published in a newspaper of general circulation in the planning jurisdiction twice prior to the public information meeting(s). The first notice shall appear not less than 30 days prior to the public information meeting(s). The second notice shall appear not less than 10 days prior to the meeting. Notice of the meeting shall also be conveyed to local Coastal Resources Advisory Council (CRAC) members and to the appropriate DCM District Planner.

(C) The local government shall offer an opportunity for public comment during the public information meeting(s).

(D) The tools to be used to report planning progress to the public during land use plan development, such as newspaper reports, local government newsletters, radio or television announcements or other reporting methods shall be described at the initial public meeting. More than one means is required.

(3) A description of the methods and techniques that shall be used to solicit public participation and input, such as citizen surveys, questionnaires, informational brochures, community outreach, town meetings or other pro-active methods. The Citizen Participation Plan shall describe the results that are expected from the methods and techniques that are used. More than one means is required and at least one effort shall be made to solicit input from non-resident landowners.

(4) A general outline of the meeting schedule for the group developing the land use plan, as designated in Subparagraph (1) above.

(c) All regular meetings of the designated planning group where the land use plan is discussed shall offer time on the agenda for public comment. A list of the names of speakers offering public comment and a copy of any written comments provided shall be kept on file by the local government and provided to the DCM staff for use in the land use plan review process.

Authority G.S. 113A-107; 113A-110.

15A NCAC 07B .0703 INTERGOVERNMENTAL COORDINATION

(a) Notification of Adjacent Jurisdictions (including non-CAMA areas, and if applicable, out of state areas): Although local authority for land use is limited to a specific jurisdiction, local governments have planning issues of mutual concern with adjacent jurisdictions, in particular policies on shared AECs. Therefore, each local government shall solicit comments on its preliminary draft land use plan or updates submitted for state review from adjacent jurisdictions and applicable regional planning entities. Solicitation shall be made in writing and a copy of the preliminary draft of the proposed land use plan shall accompany the request. The review period shall be, at a minimum 45 calendar days. After the review period ends, any comments from the adjacent planning jurisdictions and regional planning entities shall be provided to the local governing body and to the applicable DCM District Planner. Additionally, within 90 days after CRC approval of a land use plan, the local government shall provide one copy of its plan to each jurisdiction with which it shares a common border and with the regional planning entity.

(b) Coordination of Policies: Where watershed(s) that contain an AEC fall within more than one planning jurisdiction, the jurisdictions shall coordinate the development of land use policies affecting shared AECs to the maximum extent feasible.

Authority G.S. 113A-102; 113A-107.

SECTION .0800 –LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0801 PLANNING OPTIONS

Figure 1 illustrates the minimum types of plans expected for municipalities, based on population, growth rates and the presence of AECs. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (e.g., water quality concerns), should be considered when determining the final planning option by the local government.

Figure 1: TYPES OF CAMA PLANS FOR MUNICIPALITIES

		AREAS OF ENVIRONMENTAL CONCERN (AECs)		
POPULATION	GROWTH RATE*	OCEAN HAZARD AREAS	ESTUARINE/PUBLIC TRUST/COASTAL WETLANDS	NOT PRESENT

PROPOSED RULES

= 5,000	N/A			
= 2,500	HIGH			
>1,000 and < 2,500	HIGH			
≤1,000	HIGH			
= 2,500	MODERATE			
< 2,500	MODERATE			
= 2,500	LOW			
< 2,500	LOW			



Core Plan



Core or Workbook plan - To be determined in the scoping process



Fold into County plan

*POPULATION GROWTH RATE	
High	= 18.4%
Moderate	> 9.2% and < 18.4%
Low	= 9.2%
<i>Source: Office of State Planning</i>	

(a) Types of Plans

- (1) Workbook plan: This is a simplified LUP that addresses the elements of a CAMA land use plan, as described in Rule.0802 of this Section (Elements of a CAMA Land Use Plan). DCM shall provide a workbook plan template to municipalities preparing this type of plan.
- (2) Core plan: This plan addresses all of the plan elements in Rule .0802 of this Section (Elements of a CAMA Land Use Plan) in a complete and thorough manner. This type of plan is the standard CAMA LUP required for all 20 coastal counties.
- (3) Advanced core plan: The plan prepared by local governments that, due to consideration of specific local conditions, elect to exceed the core plan requirements in two or more areas. This plan also may be used to help meet the requirements of other planning programs, such as Phase II Stormwater requirements, that address the CAMA goals, or to address issues of local concern, (i.e. location of a new industry or redevelopment after storm events.)

(b) Counties are required to prepare a core plan at a minimum. After consideration of the factors listed in 15A NCAC 07B .0701(E) - Scoping of Planning Needs, a county may elect to prepare an advanced core plan.

(c) Municipalities that contain AECs may prepare either a Workbook Plan, Core Plan, or Advanced Core Plan, depending

on the factors listed in 15A NCAC 07B .0701(E)-Scoping of Planning Needs and in accordance with the criteria shown in Figure 1. Municipalities with Ocean Hazard AECs that choose to plan must prepare a minimum of a Core Plan. Municipalities with only Estuarine/Public Trust/Coastal Wetlands AECs that choose to plan must prepare a Core Land Use Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only Estuarine/Public Trust/Coastal Wetlands AECs that choose to plan and are at or below the population and growth rate thresholds shown in Figure 1 may prepare a Core Land Use Plan or a Workbook Plan, depending on the factors listed in 15A NCAC 07B .0701-Scoping of Planning Needs.

(d) Municipalities that contain no AECs are not expected to develop an individual land use plan and will not receive CAMA funding except as described in 15A NCAC 07L .0505(a). These municipalities are generally expected to either incorporate their land use policies into the county's plan or defer to the county's plan.

(e) Municipalities may develop and adopt any type of land use plan if funded by non-CAMA funds. Municipalities may seek CRC approval for these plans if all requirements found in 15A NCAC 07B are met.

(f) Sustainable Communities Component: The DCM encourages and, under conditions outlined in detail in Subchapter 07L-Local Planning and Management Grants, may provide additional financial support for plans that exceed the minimum requirements of Rule .0802- Elements of a CAMA Land Use Plan of this Section. Subchapter 07L also establishes a

Sustainable Communities component of the planning program, which provides funds to selected communities to support actions to implement the CRC approved land use plans.

Authority G.S. 113A-107(a); 113A-112.

15A NCAC 07B .0802 ELEMENTS OF A CAMA LAND USE PLAN

(a) Organization of the Plan. The elements in this Rule provide general direction for development of the LUP. A detailed Table of Contents shall be included and if the organization does not follow the outline described in this Rule, a matrix shall be included that shows the exact location of the required elements.

(b) Community Concerns and Aspirations:

- (1) Significant existing and emerging conditions: A description of the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: A description of the land use and development topics most critical to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and local areas of concern as described in this Section.
- (3) A community vision: A description of the general physical appearance and form that represents how the community hopes it will look in the future. Include statements of general objectives to be achieved by the plan, which serve as the foundation for more specific objectives and policies. The vision shall include changes that the community feels are needed to make it a better place to live, work and visit.

(c) Analysis of Existing and Emerging Conditions. The purpose of this Section is to provide a sound factual and analytical base that is necessary to support the land use and development policies included in the plan.

(1) Population, Housing, and Economy. The plan shall include an analysis and discussion of the following data and trends:

- (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age;
 - (v) Income; and
 - (vi) Other characteristics included in the analysis, if any, shall be determined in the scoping process.
- (B) Housing stock:

- (i) Estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured); and
- (ii) Building permits issued for single-family, multifamily, and manufactured homes since last plan update.

(C) Local economy: Employment by major sectors, and description of community economic activity.

(D) Projections. Include short-term (10-year), and long-term (20-year) projections of permanent and seasonal population and employment.

(2) Natural systems analysis. The purpose of the natural systems analysis is to describe and analyze the natural features and environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development.

(A) Mapping and analysis of natural features. The 14-digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. The following natural features may present limitations for development and shall be mapped (or labeled where required by map scale) at an appropriate scale with data provided by DCM or the state. In addition to mapping, the limitations for development presented by these features or conditions shall be described. Local governments may identify additional features or conditions for mapping and analysis:

- (i) AECs;
- (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
- (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HOW, and ORW) and related use support designations, and Division of Environmental Health (DEH) water quality conditions;
- (iv) Flood and other natural hazard areas;
- (v) Storm surge areas;
- (vi) Non-coastal wetlands-probable 404 wetlands;

- (vii) Water supply watersheds or wellhead protection areas;
- (viii) Primary nursery areas, where mapped; and
- (ix) Environmentally fragile areas, such as wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests.
- (B) Summary analysis of environmental conditions:
 - (i) Composite map. The plan shall include a map that shows the extent and overlap of natural features listed above and, based on the capabilities and limitations of these features and conditions for development, show the location of the following three categories of land:
 - (I) Class I – land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;
 - (II) Class II – land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and
 - (III) Class III – land containing serious hazards for development or lands where the impact of development would cause serious damage to the values of natural systems.
- (B) Environmental conditions. Provide an assessment of the following environmental conditions and features and discuss their limitations or opportunities for development:
 - (i) Water quality:
 - (I) Status of surface water quality, including data and trends on impaired streams from the Division of Water Quality 303(d) Report or other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation Section of the North Carolina Division of Environmental Health;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
 - (ii) Natural hazards:
 - (I) Areas subject to storm hazards such as recurrent flooding, storm surges and high winds.
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; and
 - (III) Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas or (see

- Part .0802(C)(2)(ix) of this Rule) where resource values may be impacted as a result of incompatible or improper development; and
- (II) Areas containing potentially valuable natural resources, such as beach quality sand deposits, protected open space, and agricultural land, that may be impacted or lost as a result of incompatible or improper development.
- (3) Analysis of Land Use and Development. The purpose of the analysis of land use and development is to describe and quantify existing patterns of land uses, identify potential land use and land use/water use conflicts, determine future development trends, and project future land needs.
- (A) Mapping and analysis of existing land use. The plan shall include the following:
- (i) A map of land including the following: Residential, commercial, industrial, institutional, public, dedicated open space, agriculture, forestry, confined animal feeding operations, and undeveloped;
- (ii) The land use analysis shall include the following:
- (I) Table that shows estimates of the land area allocated to each land use;
- (II) Description of any land use conflicts;
- (III) Description of any land use – water quality conflicts;
- (IV) Description of development trends using indicators such as building permits and platted but un-built lots; and
- (V) Location of areas expected to
- experience development during the planning period and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis.
- (iii) Historic, cultural, and scenic areas designated by a state or federal agency or by local government. These areas and sites must be located on either the existing land use map or a separate map; and
- (iv) Projections of future land needs. The analysis shall include 10-year and 20-year projections of residential land area needed to accommodate the planning jurisdiction’s projected future permanent and seasonal population (population and employment projections from Rule .0802(C)(1)(d) of this Section (Analysis of Existing and Emerging Conditions). The projections must specify the amount of land allocated to the following residential densities: residential/rural (one dwelling unit per net acre or less); low density (one to three dwelling units per net acre); medium density (four to eight dwelling units per net acre); and high density (nine dwelling units per net acre or greater). The projections of land needs may be increased up to 50% to allow for unanticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1), the projections of land needs may allow for unanticipated growth and market flexibility. Local economic development strategies may be incorporated.
- (4) Analysis of Community Facilities. The purpose of the analysis of community facilities

is to evaluate existing and planned capacity, the location, and the adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental values such as water quality; and that guide land development in the coastal area.

- (A) Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(s) of existing public and private systems, including existing condition and capacity; documentation of any overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health; existing and planned service areas; and future needs based on population projections.
- (B) Transportation systems. The analysis of the transportation system shall include a map showing: the existing highway system; any segments with unacceptable service levels; highway facilities on the current thoroughfare plan; and facilities on the current transportation improvement program. The analysis shall also assess the impact of planned highway or other transportation facilities on growth levels and development patterns.
- (C) Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of existing drainage problems in the planning area; discussion of water quality issues related to point-source discharges of stormwater runoff; and discussion of potential stormwater system requirements for the local government resulting from the EPA Storm Water Phase II Final Rule.
- (D) Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.
- (5) Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for development based on the following considerations: natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development standards of local, state, and federal agencies and the availability and capacity of water, sewer, stormwater management facilities, and transportation

systems. The analysis must include a land suitability map showing vacant or underutilized land that is suitable for development and a description of policies, methods, or facilities and services that are available or that may be developed to address natural system constraints and environmental impacts. If facilities and services must be extended or developed in order to address natural system constraints, the plan must include a reasonable cost estimate for these facilities and services. If the extension of facilities and services is expected to materially damage natural systems or to have a consequential negative impact on environmental conditions, the plan shall include a plan(s) or method(s) for avoiding or mitigating impacts to natural systems and environmental conditions. The following factors shall be considered to assess land suitability:

- (A) Natural system constraints, including water quality;
- (B) Class I, II, and III summary environmental analysis;
- (C) Proximity to existing developed areas and compatibility with existing land uses;
- (D) Potential impact of development on areas and sites designated as historic, culturally significant, or scenic;
- (E) Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and
- (F) Availability of community facilities, including water, sewer, stormwater and transportation.
- (6) Review of Current Land Use Plan. The purpose of the review of the current land use plan is to assess the governing body's success in implementing the policies and programs adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:
 - (A) Consistency of existing land use and development ordinances with current land use plan policies;
 - (B) Adoption of the land use plan's implementation measures by the governing body; and
 - (C) Efficacy of current policies in creating desired land use patterns and protecting natural systems.
- (d) Plan for the Future. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and CAMA. The plan for the future includes the

local government's goals, land use and development policies, and future land use map.

- (1) Land use and development goals. The following shall be considered in the development of the plan's goals:
 - (A) Community concerns and aspirations identified at the beginning of the planning process; and
 - (B) Needs and opportunities identified in the analysis of existing and emerging conditions.
- (2) Policies:
 - (A) Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The land use plan shall demonstrate how the land use and development goals, policies and future land use map, as required by Rule .0802(D)(4) of this Section, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.
 - (B) The plan shall contain a description of the type and extent of analysis completed to determine the impact of land use plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.
 - (C) The plan shall contain a clear statement that the governing body either supports state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on state and federal laws and regulations it must reference these in the plan.
- (3) Land Use Plan Management Topics. The purposes of the CRC management topics are to insure that CAMA land use plans support the goals of CAMA, to define the CRC's expectations for the land use planning process,

and to give the CRC a substantive basis for review and approval of land use plans. The management topics include three components: a management goal, a statement of the CRC's planning objective, and requirements for the land use plan.

- (A) Public Access:
 - (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
 - (ii) Planning Objective: Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall address access needs and opportunities, include strategies to develop adequate access, and identify feasible funding options.
 - (iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local standards for frequency and type of access facilities. These policies shall contain provisions for access for all segments of the community, including the handicapped, and shall establish access standards for beach areas targeted for nourishment.
- (B) Land Use Compatibility:
 - (i) Management Goal: Ensure that development or preservation of land and use of resources minimizes direct and indirect environmental impacts, avoids risks to public health, safety and welfare and occurs in ways consistent with the capability of the land based on considerations of landscape ecology.
 - (ii) Planning Objective:
 - (I) Adopt and comply with local development policies, for the protection of natural resources and fragile areas.
 - (II) Policies to provide clear direction to

assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

as wastewater, water infrastructure and transportation, so the quality and productivity of AECs and other fragile areas are protected or restored.

(iii) Land Use Plan Requirements:

(I) Establish building intensity and density standards, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.

(II) Establish local mitigation standards and concepts, such as cluster subdivision design, enacting local buffers, impervious surface limits, and effective innovative stormwater management alternatives.

(C) Infrastructure Carrying Capacity:

(i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.

(ii) Planning Objective: Establish level of service policies and standards for infrastructure consistent with Subpart .0802(D)(3)(b)(iii) of this Rule.

(iii) Land Use Plan Requirements:

(I) Identify/establish service area boundaries for existing and future infrastructure.

(II) Correlate land use categories with existing and planned infrastructure such

(D) Natural Hazard Areas:

(i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other important coastal features for their natural storm protection and resource values giving recognition to public health, safety, and welfare.

(ii) Planning Objective: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

(iii) Land Use Plan Requirements:

(I) Develop design, location, density, and intensity standards for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.

(II) Develop local standards to ensure that existing and planned evacuation infrastructure can accommodate development.

(E) Water Quality:

(i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.

(ii) Planning Objective: Adopt policies for coastal waters

within the planning jurisdiction to ensure that water quality is maintained if not impaired and improve if impaired.

(iii) Land Use Plan Requirements:

(I) Devise policies that prevent or control wastewater discharges (sewage and storm water) such as impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.

(II) Establish policies and land use categories that protect open shellfishing waters and restore closed or conditionally closed shellfishing waters.

(F) Local Areas of Concern:

(i) Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.

(ii) Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.

(iii) Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.

(4) Future land use map. This map depicts application of the policies for growth and development, and the desired future patterns of land use and land development with consideration given to infrastructure policies. The land use categories shown on the map shall include at a minimum residential, commercial, industrial, public, institutional and open space. The local government may

use additional categories if required to show desired land use patterns.

(A) If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis or the land suitability analysis, then the plan must include a description of the specific policies, methods, or programs that are available, or that shall be adopted by the local government, to mitigate the impacts of this development on the natural systems or that shall mitigate the impacts of natural hazards on development. In addition, the plan must include an estimate of the cost of any facilities or services that must be extended or developed to mitigate these impacts.

(B) The amount of land allocated to various uses must be calculated and compared to the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Subparagraph .0802(C)(3)(a)(iv) of this Rule (Projections of Future Land Needs).

(e) Tools for Managing Development. This element of the plan provides a description of the management tools that shall be employed, both existing and new, and the actions that shall be taken to implement the plan. It also provides a five year schedule in which required actions shall be taken. The following implementation tools shall be described:

(1) Guide for land use decision-making. Describe the specific role and the status of the land use plan policies and future land use plan map in local decisions regarding land use and development.

(2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies.

(3) Additional tools. Describe any of the following additional tools that are required to implement the land use policies.

(A) Ordinances:

(i) Amendments or adjustments in existing development codes required for consistency with the plan;

(ii) New ordinances or codes to be developed;

(B) Capital improvements program. New, upgraded or expanded community facilities, such as water, sewer, stormwater, transportation, and other facilities, and policies regarding connections to and extensions of community facilities;

(C) Acquisition program. Planned acquisition of property, easements, or rights-of-way; and

(D) Specific projects to reach goals.

(4) Action plan/schedule. The land use plan shall include a five-year action plan that lists and describes the priority actions that will be taken by the local government to implement the land use plan and specifies the fiscal year(s) in which each action shall be initiated and completed. The document shall contain a description of the specific steps that the local government shall take to involve the public in monitoring implementation of the land use plan, including the adoption of local ordinances that affect AECs. The action plan will be used to prepare the implementation status report for the land use plan.

Authority G.S. 113A-102; 113A-107; 113A-110; 113A-111.

SECTION .0900 – PLAN REVIEW AND CRC APPROVAL

15A NCAC 07B .0901 STATE TECHNICAL ASSISTANCE, REVIEW AND COMMENT ON PRELIMINARY DRAFT PLAN

(a) At the beginning of the planning process, DCM shall provide opportunities for educating local officials about the CAMA land-use planning guidelines and the planning process, through such means as workshops and training videos.

(b) DCM shall provide maps and data to assist with developing the land use plan. This data may include population, natural resources, water quality, economic activity and transportation infrastructure for counties, and where available, for municipalities. Other infrastructure or service information needed for analysis can generally be found in existing local plans, studies and budgets. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other recognized sources.

(c) Procedures for Agency Review and Comment. DCM shall review all plans for technical accuracy and consistency with the CRC's requirements for land use plans and shall provide notice to the CRC and other State and Federal Agencies that the plan is available for review and comment. The local government shall provide copies of the preliminary draft land use plan as specified by DCM.

(d) Time Period for Review and Comment. DCM shall make its review and provide comments to the local government within 90 days of receipt of the preliminary draft or advise that additional time may be needed.

(e) Local Response to Comments. The local government shall answer the comments within 90 days of receipt and modify the plan into a final draft plan or advise when this shall be available.

Authority G.S. 113A-107; 113A-124.

15A NCAC 07B .0902 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) Public Hearing Requirements. Local adoption of the Land Use Plan (LUP) requires a public hearing. Notice of the hearing shall state the date, time, place, proposed action, and that copies of the document may be reviewed at a particular office in the county courthouse, county office building, or town hall during designated hours. Any other public facility where the document can be reviewed such as a library or community center shall be designated in the notice. The notice must appear at least twice in a newspaper of general circulation in the planning jurisdiction. The first notice must appear not less than 30 days prior to the hearing. The second notice must appear not less than 10 days prior to the hearing. Written notice of the public hearing shall be posted on the local government's principal bulletin board 30 days prior to the hearing or, if there is no such bulletin board, at the door of the governing body's usual meeting room. If possible, an electronic hearing notice shall be provided on the World Wide Web at the time of the original notice.

(b) 30-Day Local Review Period. Copies of the proposed land use plan or update (final draft) shall be available for public review at the time the first notice is provided and in the place(s) listed in the notice. At least one copy of the draft plan shall be available for checkout for a 24-hour period by residents and property owners of the planning jurisdiction.

(c) Changes After Notice of Public Hearing. Minor editorial changes after notice are acceptable without re-advertising the public hearing. Substantive changes such as re-wordings which alter the basic intent of policy statements, or changes in time lines for action which were in place for the original notice shall require a new public hearing. This notice shall be advertised in the same manner as the original.

(d) The final decision on local policies to be included in the land use plan is to be made by the elected body of each participating local government. Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and shall comply with all state and federal rules.

(e) Local Adoption of the Plan. After considering all oral and written comments offered throughout the process and at the public hearing, the governing body may adopt the plan.

(f) Transmittal to the CRC. The CRC shall receive copies of the adopted Land Use Plan at least 45 days prior to the next regularly scheduled CRC meeting in order for the plan to be considered for deliberation at that meeting. Upon notification to the local government from the Executive Secretary that the plan is complete, it will be deemed received.

Authority G.S. 113A-107(a); 113A-110(f).

15A NCAC 07B .0903 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR APPROVAL

(a) Re-Approval: If the scoping process outlined in 15A NCAC 07B .0701-Scoping of Planning Needs determines that no plan update is required, a local public hearing shall be held and the unmodified plan shall be locally re-adopted. A copy of the currently approved Land Use Plan (LUP) shall be forwarded to the CRC with a request for re-approval. A summary of the

scoping process shall be provided to the CRC or designated committee along with the request for re-approval.

(b) CRC's Designated Committee Presentation:

- (1) The appropriate DCM District Planner shall report to the CRC's designated committee as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, and recommend for or against approval.
- (2) The LUP shall be presented to the CRC's designated committee by a duly elected local official, municipal or county staff member, or designated citizen representative.
- (3) The public shall have an opportunity to present objections, comments, or statements of support prior to action by the CRC's designated committee. Objections from the public must be in writing and couched within the criteria for CRC approval as specified in Subparagraph .0903(C)(3) of this Rule and must identify the specific plan elements that are opposed.

(c) CRC Approval:

- (1) The CRC shall approve, conditionally approve or disapprove the LUP following the procedures and conditions specified in this Section. The CRC may question accuracy or consistency of items in the plan and shall request that the local government support items of questionable consistency or data prior to final approval.
- (2) Provided written notification of plan adoption has been received by the Executive Secretary at least 45 days prior to the next regularly scheduled CRC meeting, the CRC shall either approve, conditionally approve or disapprove the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan will be approved.
- (3) The CRC shall approve plans which:
 - (A) are consistent with the current North Carolina Coastal Management Program; and,
 - (B) are consistent with the Rules of the CRC; and,
 - (C) do not violate state or federal law; and,
 - (D) contain a description of the type and extent of analysis completed to determine the impact of land use plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs, and processes to mitigate any negative impacts on applicable management topics. If a local government cannot meet any LUP requirement contained within

each of the six Management Topics the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to satisfy the LUP requirements. If such description(s) are not included in the plan, or do not meet the corresponding planning objective(s), it shall not be approved.

(d) Non-Approval or Conditional Approval: If the plan is disapproved or conditionally approved, the CRC shall within 30 days provide the local government with suggestions as to how the plan might be changed so approval can be granted. Until the plan is approved, the pre-existing approved plan shall remain in effect. When the local government complies with any imposed condition for a conditionally approved plan, as determined by the Director of the DCM, then plan approval is automatic with no further action needed by the CRC.

Authority G.S. 113A-107; 113A-110(f); 113A-111.

15A NCAC 07B .0904 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

(a) Each local government engaged in CAMA land use planning shall complete an LUP implementation status report every two years as long as the plan remains in effect. DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B .0802(e) (Tools for Managing Development).

(b) The implementation status report shall identify:

- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its approved land use plan;
- (2) Any actions that have been delayed and the reasons for the delays;
- (3) Any unforeseen land use issues that have arisen since approval of the plan;
- (4) Consistency of existing land use and development ordinances with current land use plan policies; and
- (5) Current policies that create desired land use patterns and protection of natural systems.

(c) Results shall be made available to the public and shall be forwarded to DCM.

Authority G.S. 113A-107(a); 113A-124.

SECTION .1000 – LAND USE PLAN AMENDMENTS

15A NCAC 07B .1001 LAND USE PLAN AMENDMENTS

(a) Normal Amendment Process

- (1) The Land Use Plan (LUP) may be amended if local conditions create a need for policy or map changes or clarifications. Plans requiring amendments in more than half of the required elements, as specified in 15A NCAC 07B .0802 (Elements of a CAMA Land Use Plan) are considered a plan update and subject to all

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of the process and document requirements of a new plan.

- (2) The LUP may be amended following a public hearing as described in 15A NCAC 07B .0902 (Public Hearing and Local Adoption Requirements).
- (3) The local government proposing an amendment to its LUP shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than 30 days prior to the public hearing. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the amendment as adopted, including text and maps (if applicable), and approval of adoption within seven days.
- (4) For joint plans, originally adopted by each participating jurisdiction, each government shall retain its sole and independent authority to make amendments to the plan as it affects their jurisdiction.
- (5) The amendment shall be circulated to other federal and state agencies for review and comment prior to the local public hearing if deemed appropriate by DCM.
- (6) CRC review and action on land use plan amendments shall be in the same manner as provided in 15A NCAC 07B .0903 (b), (c) and (d).

(b) Waiver of CRC approval of Amendments

- (1) A local government that desires to request waiver of CRC approval of a LUP amendment shall first meet the requirements contained in Subparagraphs (a)(1), (2) and (3) of this Rule. When the local government deems a locally adopted amendment meets the criteria listed in this Section, it may request, of the Executive Secretary, waiver of CRC approval. The Executive Secretary shall make such determination and mail written notification to the local government, and CRC members, no later than two weeks after receipt of notice. The Executive Secretary's authority to waive CRC approval of proposed LUP amendments is limited to the following criteria:
 - (A) Minor changes in policy statements or objectives for the purpose of clarification of intent; or
 - (B) Modification of any map that does not impose new land use categories in areas least suitable for development as shown on the Land Suitability Map; or
 - (C) New data compilations and associated statistical adjustments that do not suggest policy revisions; or
 - (D) More detailed identification of existing land uses or additional maps

of existing or natural conditions, that do not affect any policies in the LUP;

- (2) If the waiver is granted, the amendment shall become final upon approval of the Executive Secretary, and is not subject to further CRC review described in 15A NCAC 07B .0903 (Presentation to CRC for Approval).
- (3) If the request for waiver is denied by the Executive Secretary, the local government shall submit its amendment for review by the CRC in accordance with the regular plan approval process in 15A NCAC 07B .0903 (Presentation to CRC for Approval).

(c) Any amendments to the text or maps of the LUP shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and CRC approval. The amended LUP shall be maintained as required by G.S. 113A-110(g).

(d) Additionally, within 90 days after CRC approval of a LUP amendment, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common border and with the regional planning entity.

Authority G.S. 113A-107(a); 113A-110; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt the rules cited as 15A NCAC 07L .0501-.0508, .0601-.0603, .0701-.0705, amend the rules cited as 07L .0101-.0102, and repeal the rules cited as 07L .0201-.0206, .0301-.0304, .0401-.0405. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 8, 2001 (deadline for written comments or questions – July 25, 2001)

Time: 7:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC

Public Hearing:

Date: August 23, 2001 (deadline for written comments or questions – August 9, 2001)

Time: 7:00 p.m.

Location: Pasquotank County Courthouse, 206 East Main Street, Elizabeth City, NC

Public Hearing:

Date: August 29, 2001 (deadline for written comments or questions – August 15, 2001)

Time: 7:00 p.m.

Location: Beaufort County Courthouse, 112 West 2nd Street, Washington, NC

Public Hearing:

Date: September 5, 2001 (deadline for written comments or questions – August 22, 2001)

Time: 7:00 p.m.

Location: Craven County Courthouse, 406 Craven Street, New Bern, NC

Public Hearing:

Date: September 12, 2001 (deadline for written comments or questions – August 29, 2001)

Time: 7:00 p.m.

Location: New Hanover County Courthouse, 314 Princess Street, Wilmington, NC

Reason for Proposed Action: The Department of Environment and Natural Resources is revising the funding rules for Local Planning and Management Grants to local governments. These grants provide funding assistance for local government land use plans, as required by the Coastal Area Management Act (CAMA), and coastal planning and management projects within North Carolina's coastal area. These changes are based on the recommendations of the Land Use Plan Review Team, which was appointed by the Coastal Resources Commission to evaluate the current program and make recommendations for improvement. The revisions include a more cost effective framework for funding land use plans and incentives to improve the level of implementation.

Comment Procedures: Comments may be submitted to Kathy Vinson, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808 and will be accepted through September 12, 2001.

Fiscal Impact

State 15A NCAC 07L .0101-.0102, .0501-.0508, .0601-.0603, .0701-.0705

Local 15A NCAC 07L .0101-.0102, .0501-.0508, .0601-.0603, .0701-.0705

Substantive (≥\$5,000,000)

None 15A NCAC 07L .0201-.0206, .0301-.0304, .0401-.0405

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07L – LOCAL PLANNING AND MANAGEMENT GRANTS

SECTION .0100 – PURPOSE AND AUTHORITY

15A NCAC 07L .0101 AUTHORITY

These Rules are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of Environment, ~~Health,~~ and Natural Resources in the Secretary's capacity as executive head of the state agency designated by the Governor to administer state funds and to receive and administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0102 PURPOSE

The purpose of these Rules is to establish the criteria and procedures for funding the Department's program of grants for

local land use plans and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist ~~localities—~~local governments in developing and implementing land use plans and management strategies for ~~the wise management of~~ their coastal resources, as mandated and encouraged by the Coastal Area Management Act (CAMA). ~~These~~ Funds are to be used in refining and carrying out local land use planning and management ~~programs,~~programs by local governments within the 20 counties defined by the CAMA. ~~Localities—~~Local governments seeking funds to carry out local implementation and enforcement of the minor permit program under the Coastal Area Management Act (the minor permit program)—CAMA should consult 15A NCAC 7I for those grant criteria and procedures.

Authority G.S. 113A-112; 113A-124.

SECTION .0200 – GENERAL STANDARDS

15A NCAC 07L .0202 PRIORITIES FOR FUNDING

~~(a) In making local planning and management grants, the Department will follow the general priorities set out in Subparagraph (b) of this Rule. Eligible projects are set out in Rule .0203 of this Section and have been placed in the priority category indicated. Any applications for funding for projects not specifically identified and placed in a priority category in Rule .0203 of this Section will be assigned the appropriate priority category by the Department upon receipt of the application.~~

~~(b) General priority categories for local planning and management grants are as follows:~~

~~(1) The highest priority includes those projects directly mandated by statute, local participation in projects initiated by the Department, and those projects the Department indicates urgently need local attention in order to meet CAMA objectives. Grants for projects in this priority category shall be for 67 percent to 80 percent of the total project cost.~~

~~(2) The second highest priority includes those projects directly related to carrying out the explicit goals of CAMA, for which the Department indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the land use plan such as public facilities planning or land use regulations preparation. Grants for projects in this category shall be for 50 percent to 67 percent of the total project cost.~~

~~(3) The third highest priority includes those projects related to improving local coastal management and land use management capabilities, but are neither directly related to the explicit goals of CAMA or the approved local land use plans or that are not coastally dependent in nature. Grants for projects in this priority category shall be for 33 percent to 50 percent of the total project cost.~~

~~(c) In priority categories one and three, the proportion of the grant award to total project costs will be the same for all similar projects. For example, if one land use plan update is funded at a~~

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~~90 percent level, all land use plan updates will be funded at a 90 percent level. The only exception to this involves multi-year projects which may receive the lower level of funding within a given priority category after the initial year.~~

~~(d) Generally, available funds will first be allocated to projects in priority category one; then, if there are funds remaining, grants will be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in (e) of this Rule will also be considered in funding decisions. For example, if a project in priority category three is part of an ongoing planning program which is being implemented, the project may be funded before lower level priority category two projects.~~

~~(e) The following factors shall be used by the department to establish priorities for individual projects within the general priority category and to establish the appropriate proportion of the grant award to total project costs for the various types of eligible projects: contribution towards meeting CAMA objectives; significance of coastal resources to be managed; urgency of need; feasibility of successful completion of project; past history of implementation of CAMA planning and management activities; and geographic distribution, and potential applicability to other coastal towns and counties.~~

~~(f) The capability of a local government to implement a proposed project will be considered a major factor in determining whether to approve a local planning and~~

~~management grant. Past experience as well as present management and administrative capabilities will be considered.~~

~~(g) The identification of a proposed project as a high priority activity in an approved local land use plan will be considered as support for funding.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0203 ELIGIBLE PROJECTS

~~(a) The lists in Subparagraphs (b) and (c) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in Rule .0202 of this Section. These lists are not intended to be exhaustive or restrictive. Localities may apply for funds for any related projects that will improve local planning and management capabilities. Demonstration projects or innovative projects which have potential applicability to other coastal towns and counties will receive additional consideration for funding regardless of which priority category in which they fall. Examples of such projects include, but are not limited to, model building codes addressing the special construction standards necessary in a beach community; model pedestrian beach access opportunities with resulting parking design standards. Note: these examples have been funded previously by this program.~~

~~(b) Eligible projects for planning and management grants include:~~

Projects Priority Category

- (1) Those activities specifically designated by the Department on an annual basis, following consultation with the Coastal Resources Commission and local governments, to be necessary to bring local plans into compliance with state guidelines for land use planning; 1
- (2) Adopting, refining, or updating land use plans to reflect changed conditions (including necessary data collection, public participation, policy development, etc.); 2
- (3) Adopting or amending ordinances to further secure compliance with state guidelines on AECs; 1
- (4) Beach access plans and studies (including inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights, etc.); 2
- (5) Erosion control plans and studies (including mapping, recession rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies, etc.); 2
- (6) Studies and planning leading to the nomination of new AECs (as described in 15A NCAC 7H .0503) and locally significant environmental areas; 2
- (7) Hurricane preparedness and beach evacuation plans and studies; 2
- (8) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing water front parks and public areas (site design, user studies, cost analysis, etc.); 2
- (9) Preparing, adopting, or amending ordinances necessary to carry out adopted land use plans, state guidelines, and the state coastal zone management plan (including regulations on or for zoning, sub-division, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements, etc.); 2
- (10) Plans and studies related to coastally significant historic preservation programs (including identification of sites, preparation of educational programs and materials, design of preservation strategies, etc.); 3
- (11) Initial water and sewer plans and studies; 3
- (12) Land use related capital facilities programming; 3
- (13) Base mapping as a fundamental management tool; 3
- (14) Recreation and open space plans; 3
- (15) Other planning, studies, and data acquisition supportive of coastal planning and management including public education or involvement on coastal issues; solid waste 3

- planning; port planning; sport and commercial fishing studies, etc.;
- (16) Enforcement of ordinances adopted to carry out adopted land use plans; 3
- (17) Management of water front parks, beaches, and natural areas; Note: These projects shall be limited to one year duration; 3
- (18) Coordination of local coastal management activities with other local management activities (including internal coordination, city-county coordination, etc.); 3
- (19) Other coastally related management projects. 3

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0204 PROJECT DURATION

- ~~(a) Generally, the grant period for local planning and management projects will be one year.~~
- ~~(b) In the event that any local planning and management funds remain or become available after the initial disbursement of funds, the Department may make additional grants to localities to supplement existing projects or to initiate new projects. All unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by localities at specified times during the year.~~
- ~~(c) Planning projects may be for any length up to three years. However, individual grants may not be for a period over one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requiring more than one year to complete is funded for its first year, this action does not commit the Department to subsequent funding throughout the estimated duration of the project.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0205 CONSISTENCY WITH PLANS AND GUIDELINES

~~All proposed projects must be consistent with CAMA, state guidelines and standards implementing CAMA, approved local land use plans, and the state's coastal management program~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0206 RELATION TO OTHER FUNDING

~~Applicants are encouraged to combine these funds with other local, state, and federal funds to finance appropriate projects. However, these funds may not be used as "local matching funds" for other state or federal grants.~~

Authority G.S. 113A-112; 113A-124.

SECTION .0300 – APPLICATION PROCESS

15A NCAC 07L .0301 APPLICATION FORM

- ~~(a) At least 30 days prior to each new grant period, the Department shall distribute to each eligible applicant a grant application form and notice of availability of funds.~~
- ~~(b) The grant application form shall request a summary of: the project description, project objectives, project products, project budget, and such other information as is deemed necessary by the Department. The form may be supplemented by a project narrative that more completely describes the proposed project. As all applications will be reviewed primarily through the use of~~

~~the material submitted, clarity is essential. Incomplete, vague or inadequate applications may not be processed.~~

~~(c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.~~

~~(d) A separate application form shall be completed for each proposed project.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0302 SUBMITTAL

~~(a) Applicants in Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, and Dare Counties shall submit their applications to the Division of Coastal Management, DEHNR, 1367 U.S. 17 South, Elizabeth City, NC 27909. Applicants in Craven, Pamlico, Carteret, and Onslow Counties shall submit their application to the Division of Coastal Management, DEHNR, P.O. Box 769, 3411 Arendell St., Morehead City, NC 28557. Applicants in Tyrrell, Hyde, Washington, Hertford, Bertie, and Beaufort Counties shall submit their applications to the Division of Coastal Management, DEHNR, P.O. Box 2188, 1424 Carolina Avenue, Washington, NC 27889-2188. Applicants in Pender, New Hanover, and Brunswick Counties shall submit their applications to the Division of Coastal Management, DEHNR, 127 Cardinal Drive Extension, Wilmington, NC 28405-3845.~~

~~(b) To be considered for funding, grant applications must be received at the addresses listed in (a) of this Rule on or before the deadline indicated in the notice of availability of funds.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0303 PROCEDURE FOR PRELIMINARY APPROVAL OR DISAPPROVAL

~~(a) Within a reasonable time after the deadline for receiving applications set in the notice of availability of funds, the Department shall process and decide upon all applications for funds. In all cases, the Department shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, the Department may request the applicant to submit additional information or agree to a revised project proposal or project budget.~~

~~(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by Rule .0401 of this Subchapter.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0304 ASSISTANCE IN COMPLETING APPLICATIONS

~~The following offices may be contacted for further information and assistance in completing grant applications:~~

- ~~(1) Division of Coastal Management~~

1424 Carolina Avenue
P.O. Box 2188
Washington, N.C. 27889-2188
(919) 946-6481

(2) Division of Coastal Management
127 Cardinal Drive Extension
Wilmington, N.C. 28405-3845
(919) 395-3900

(3) Division of Coastal Management
1367 U.S. 17 South
Elizabeth City, NC 27909
(919) 264-3901

(4) Division of Coastal Management
P.O. Box 769
3411 Arendell Street
Morehead City, NC 28557
(919) 726-7021

(5) Division of Coastal Management
P.O. Box 27687
Raleigh, N.C. 27611
(919) 733-2293

Authority G.S. 113A-112; 113A-124.

SECTION .0400 – GRANT ADMINISTRATION

15A NCAC 07L .0401 CONTRACT AGREEMENT

(a) ~~Prior to the disbursement of funds, the locality and department will become parties to a contract.~~
(b) ~~The Department shall prepare the contract and submit it to the locality within a reasonable period of time following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person authorized by the locality to enter into contracts and returned to the Department. The contract is effective, and approval of the grant application final, when signed by the secretary of the Department or the secretary's designee.~~
(c) ~~Subcontracts shall be reviewed and approved by the Department prior to execution by the local government. The Department shall consider past work history as well as present workload of the proposed subcontractor in reviewing the subcontract. No subcontracts may be made without the written approval of the Department.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0402 ACCOUNTABILITY

Grantees will be subject to accounting techniques and procedures similar to those applicable to the Department as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes and standards generally applicable to local governments, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards will be observed.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0403 PAYMENT

(a) ~~Payment will be made periodically as specified in the contract upon the timely submittal of a requisition for payment and certification that reasonable and satisfactory progress is being made upon the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.~~
(b) ~~The final 25 percent of the grant award shall not be paid until the Department accepts a satisfactory draft project completion report.~~
(c) ~~The Department may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0404 PROGRESS REPORTS AND GRANT MONITORING

(a) ~~Specific requirements for progress reports will be set out in each contract with grantees.~~
(b) ~~Generally, a quarterly progress report will be required of all grantees.~~
(c) ~~The Department shall make such site visits and consultations as deemed necessary.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0405 PROJECT COMPLETION REPORT

(a) ~~A project completion report shall be required for all projects. The Department shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.~~
(b) ~~A draft project completion report shall be submitted to the Department with or prior to submission of the final requisition for payment.~~

Authority G.S. 113A-112; 113A-124.

SECTION .0500 - GENERAL STANDARDS

15A NCAC 07L .0501 ELIGIBLE APPLICANTS

(a) Applications for grants for local planning and management funds may be made by the following:
(1) Counties within the coastal area;
(2) Municipalities within coastal counties.
(b) Two or more eligible applicants are encouraged to make a joint application for funds to carry out jointly sponsored or regional projects.
(c) Local coastal governments are eligible to apply for the Sustainable Communities component, as described in Rule .0506 of this Section.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0502 CONSISTENCY WITH PLANS AND GUIDELINES

All proposed projects must be consistent with, or aimed at becoming consistent with, CAMA, state guidelines and standards implementing CAMA, local land use plans approved

by the Coastal Resource Commission (CRC), and the state's coastal management program.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0503 PRIORITIES FOR FUNDING LAND USE PLANS AND IMPLEMENTATION PROJECTS

(a) In funding local planning and management grants, the Department will follow the general priorities set out in Paragraph (b) of this Rule. Examples of the type of eligible projects are listed and have been placed in the appropriate priority category. Any applications for project funding not specifically identified and placed in a priority category, will be assigned the appropriate priority category by the Department upon receipt of the application. Funding priorities and eligibility for the Sustainable Communities component of the planning program are described in Rule .0506 of this Section (Sustainable Communities Component of the Planning Program). The following factors shall be used by the Department to establish priorities for individual projects within the general priority category, and to establish the appropriate proportion of the grant award to total project costs:

- (1) the extent to which the project includes measures of environmental protection beyond AEC standards;
- (2) contribution towards meeting CRC objectives;
- (3) urgency of need;
- (4) feasibility of successful completion of project;
- (5) past history of implementation of CAMA planning and management activities;
- (6) past experience with this program as well as present management and administrative capabilities;
- (7) geographic distribution; and
- (8) potential applicability to other coastal area municipalities and counties.

(b) General priority categories for local planning and management grants are as follows:

- (1) The highest priority includes those projects directly mandated by statute, including initial and updated land use plans as described in 15A NCAC 07B, local participation in projects initiated by the Department, and those projects the Department indicates urgently need local attention in order to meet CRC management topics. In general, grants for projects in this priority category, except Workbook Land Use Plans, shall be funded for no more than 85 percent of the total project cost, although lower funding percentages may be awarded. The type of land use plan to be funded and the percent of funding will be based on community characteristics outlined in the CRC's Land Use Planning Guidelines and will be determined during the scoping process described in 15A NCAC 07B .0701 to be held prior to project application.
- (2) The second highest priority includes those projects directly related to carrying out the explicit goals of CAMA, for which the

Department indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the land use plan such as public facilities planning or land use regulations preparation. Grants for projects in this category shall be for no more than 65 percent of the total project cost, although lower funding percentages may be awarded.

- (3) The third highest priority includes those projects related to improving local coastal management and land use management capabilities. Grants for projects in this priority category shall be for no more than 50 percent of the total project cost, although lower funding percentages may be awarded.

(c) In priority categories two and three, the proportion of the grant award to total project costs will be the same for all similar projects. For example, if one waterfront access plan is funded at a 60 percent level, all waterfront access plans will be funded at a 60 percent level. The only exception to this involves multi-year projects which may receive a lower level of funding within a given priority category after the initial year.

(d) Generally, available funds will first be allocated to projects in priority category one; then, if there are funds remaining, grants will be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in Paragraph (a) of this Rule will also be considered in funding decisions. For example, if a project in priority category three is part of an ongoing planning program being implemented, the project may be funded before a priority category two project. Sustainable Communities projects will be funded as described in Rule .0506 of this Section (Sustainable Communities Component of the Planning Program).

(e) Any local government whose land use plan is not certified by the CRC due to policies that are inconsistent with CRC rules will not receive further funding under this program until these inconsistencies are corrected.

(f) Any local government that is not implementing its approved land use plan will not receive additional funding under this program. Land use plan implementation will be documented through periodic implementation status reports provided to the Division of Coastal Management, as described in 15A NCAC 07B .0904. A local government that is deemed by the Division of Coastal Management District Planner to not have implemented its current land use plan may seek a review by the Director of the Division of Coastal Management that current LUP implementation is acceptable to receive future funding.

(g) All funding decisions shall be based on availability and amount of state and federal appropriations.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0504 ELIGIBLE PROJECTS

(a) The lists in Paragraph (b) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in Rule .0503 of this Section (Priorities For Funding Plans and Implementation Projects.) These lists are not intended to be exhaustive or restrictive. Local governments may apply

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for funds for any related projects that will improve local planning and management capabilities.

(b) Examples of eligible projects and their associated priority category include:

- (1) Priority Category-Type 1
 - (A) Those activities specifically designated by the Department on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state guidelines for land use planning;
 - (B) Adopting, amending, or updating land use plans to reflect changed conditions (e.g., necessary data collection, public participation, policy development).
- (2) Priority Category-Type 2
 - (A) Adopting or amending ordinances to further secure compliance with state guidelines in Areas of Environmental Concern (AEC);
 - (B) Beach access plans and studies (e.g., inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);
 - (C) Erosion control plans and studies (e.g., mapping, recession rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
 - (D) Studies and planning leading to the nomination of new AEC's, as described in 15A NCAC 07H .0503 and locally significant environmental areas;
 - (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing water-front parks and public areas (e.g., site design, use studies, cost analysis);
 - (F) Preparing, adopting, or amending ordinances necessary to carry out adopted land use plans, state guidelines, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements);
 - (G) Hazard mitigation plans.
- (3) Priority Category-Type 3

- (A) Initial water and sewer plans and studies.
- (B) Land use related capital facilities programming;
- (C) Base mapping as a fundamental management tool;
- (D) Other planning, studies, and data acquisition supportive of coastal planning and management including but not limited to public education or involvement on coastal issues; solid waste planning; port planning; sport and commercial fishing studies;
- (E) Enforcement of ordinances adopted to carry out approved land use plans;
- (F) Coordination of local coastal management activities with other local management activities (e.g., internal coordination, city-county coordination);
- (G) Other coastally related management projects.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0505 MINIMUM LAND USE PLANNING AND FUNDING REQUIREMENTS

(a) Counties shall, at a minimum, prepare a Core Land Use Plan, as described in 15A NCAC 07B .0801. Counties may develop and adopt any type of land use plan if funded by non-CAMA funds. However, such plans are not eligible for CRC approval unless all requirements found in 15A NCAC 07B are met.

All municipalities may prepare land use plans. However, to receive funding under this grant program for Core land use plan development, municipalities must have AECs within their jurisdiction and meet the population and growth rate thresholds as shown in Figure 1. To receive funding under this grant program, municipalities with only Ocean Hazard Areas AECs must prepare a Core Land Use Plan. Additionally, municipalities with Estuarine/Public Trust/ Coastal Wetlands AECs shall prepare a Core Land Use Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only Estuarine/Public Trust/Coastal Wetlands AECs that are at or below the population and growth rate thresholds shown in Figure 1 may prepare a Core Land Use Plan or a Workbook Plan as described in 15A NCAC 07B .0801. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (such as water quality concerns) being addressed by the municipality, should be considered during the scoping process described in 15A NCAC 07B .0701(e) when determining the final planning option.

Municipalities with no AECs within their planning jurisdiction may either incorporate their land use policies into the county's plan or defer to the county's plan. Such municipalities will not be funded for individual plans except under special circumstances and if funds are available. Examples of special circumstances include: the existence of non-AEC fragile areas (such as federally regulated wetlands, historic and cultural resources, critical wildlife habitats and scenic areas), land use

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compatibility problems or unexpected growth pressures, such as the relocation of major industry to the area. Municipalities may develop and adopt any type of land use plan if funded by non-

CAMA funds. However, such plans are not eligible for CRC approval unless all requirements found in 15A NCAC 07B are met.

Figure 1 illustrates the criteria the Department will use to determine the minimum types of plans that will be expected and funded for municipalities

Figure 1: FUNDING FOR MUNICIPAL CAMA LAND USE PLANS

POPULATION	GROWTH RATE*	AREAS OF ENVIRONMENTAL CONCERN (AECs)		
		OCEAN HAZARD AREAS	ESTUARINE/PUBLIC TRUST/COASTAL WETLANDS	NOT PRESENT
≤ 5,000	N/A	Core Plan	Core Plan	Fold into County plan
≤ 2,500	HIGH	Core Plan	Core Plan	Fold into County plan
>1,000 and < 2,500	HIGH	Core Plan	Core Plan	Fold into County plan
< 1,000	HIGH	Core Plan	Fold into County plan	Fold into County plan
≤ 2,500	MODERATE	Core Plan	Fold into County plan	Fold into County plan
< 2,500	MODERATE	Core Plan	Fold into County plan	Fold into County plan
≤ 2,500	LOW	Core Plan	Fold into County plan	Fold into County plan
< 2,500	LOW	Core Plan	Fold into County plan	Fold into County plan

Core Plan
 Core or Workbook plan - To be determined in the scoping process
 Fold into County plan

*GROWTH RATE

High	= 18.4%
Moderate	> 9.2% and < 18.4%
Low	= 9.2%

Source: Office of State Planning:

(b) Land Use Plans shall be funded as follows:

(1) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act, shall be used to determine the economic status of counties. Counties designated as Tier 1 and Tier 2 shall be considered economically distressed. Economically distressed counties that prepare a Core Land Use Plan shall be funded at no more than 75 percent of the project costs, although lower percentages of funding may be provided. Counties that prepare a Core Land Use Plan and do not have a Tier 1 or Tier 2 designation shall be funded at no more than 65

percent of the project cost, although lower percentages of funding may be provided.

(2) Municipalities preparing Core Land Use Plans shall be funded at no more than 60 percent of the project cost, although lower percentages of funding may be provided.

(3) Counties and municipalities preparing Advanced Core Land Use Plans, as described in 15A NCAC 07B .0801, shall be funded at no more than 75 percent, except for Tier 1 and Tier 2 designated counties preparing Advanced Core Land Use Plans. If so designated, these County plans shall be funded at no more than 85 percent, although lower funding percentages may be provided. Eligibility for funding to prepare an Advanced Core Land Use Plan will be determined during

the scoping process and will be based on the level of planning proposed by the local government. To be considered for funding to prepare an Advanced Core Land Use Plan, the proposal must demonstrably maintain or improve local environmental conditions and advance the local government towards implementation of its currently approved land use plan.

- (4) Municipalities preparing Workbook Land Use Plans may receive limited funding for map preparation only.
- (5) The development of regional or joint land use plans is encouraged. Local governments that choose to combine individual plans into joint or regional plans will be eligible for funding not to exceed the amount that would have been provided for individual plans.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0506 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM

(a) The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast. Local governments designated as Sustainable Communities will execute multi-year, land/water projects that are consistent with CRC management topics and the CRC approved local land use plan. Examples of sustainable projects include oyster re-seeding projects, establishment of greenway systems, and eco-tourism projects.

(b) The CRC shall identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas will be provided in the Notice of Availability of Funds and Request for Proposals.

(c) To qualify for the Sustainable Communities Component, a local government's planning program must do the following:

- (1) support and develop connections between environmental health and economic vitality;
- (2) restore and maintain environmental quality of natural resources;
- (3) address additional degradation of resources through planned, proactive measures;
- (4) include analysis of cumulative and long term impacts in land use decision making and work to protect the natural resources of the North Carolina coast for future generations;
- (5) incorporate the values of the community and take advantage of community resources;
- (6) establish policies that show a commitment to equitable access to natural resources to all citizens; and
- (7) address environmental impacts so that the costs of protecting the environment do not unfairly burden any one geographic or socioeconomic sector.

(d) The following factors shall be considered by the CRC in the selection of Sustainable Communities: merit of proposal and its relevance to CRC management topics; proposed education and public participation throughout the life of the project; financial and administrative capacity of the local government to

implement the project; and past history of land use plan implementation by that local government.

(e) The Department shall accept applications for the Sustainable Communities Component once every three years from counties and municipalities whose land use plans have been certified within the past three years. During the first year the Sustainable Communities Component is offered, local governments with land use plans older than three years will be eligible to apply. The CRC shall make final selections of no more than four communities per funding cycle, based on recommendations of the Coastal Resources Advisory Council (CRAC). Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.

(f) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to the CRC and CRAC. They shall formulate a land use plan addendum during the first year as a Sustainable Community and update the Land Use Plan five years after the completion of the sustainability project.

(g) Sustainable Communities shall receive the following assistance: planning grant funds for the initial phase of the project and a local land use plan addendum for up to 80 percent of the project costs, not to exceed forty thousand dollars (\$40,000); priority funding consideration for Planning and Management Grant Funds for related projects for two of the following three years, for a maximum of twenty thousand dollars (\$20,000) for each grant; and DCM support for all grant applications to other agencies for project funding.

(h) DCM will catalog, advertise and distribute summary reports on projects funded under this program to other local governments in the coastal area.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0507 PROJECT DURATION

(a) Core and Advanced Core Land Use Plans may be funded over a two-year period. Funding during the first year will be to prepare background material, with second year funding primarily used for policy development.

(b) Other planning and management projects may be approved for up to three years. However, individual grants will usually be for a period of one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requires more than one year to complete, and is funded for its first year, this action does not commit the Department to subsequent funding throughout the estimated duration of the project, except that multi-year land use plans will be given priority funding for Phase II.

(c) In the event that any local planning and management funds remain or become available after the initial disbursement of funds, the Department may provide additional grants to local governments to supplement existing projects or to initiate new projects. All previous unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by local governments at specified times during the year.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0508 RELATION TO OTHER

FUNDING

Applicants may combine these funds with other local, state, and federal funds to finance appropriate projects. However, these funds may not be used as "local matching funds" for other state or federal grants, except that Sustainable Community funds may be used for match if allowed by other state or federal programs.

Authority G.S. 113A-112; 113A-124.

SECTION .0600 - APPLICATION PROCESS

15A NCAC 07L .0601 APPLICATION FORM

(a) At least 30 days prior to each new land use planning and management grant period, the Department shall distribute to each eligible applicant a grant application form and notice of availability of funds.

(b) The grant application form shall request a project description, project objectives, project deliverables, project budget, consistency of the proposed project with the approved Land Use Plan (if applicable), and other information as deemed necessary by the Department. A project narrative that more completely describes the proposed project may supplement the form. Clarity is essential in all application materials. Incomplete, vague or inadequate applications may not be processed.

(c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.

(d) A separate application form shall be completed for each proposed project.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0602 ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL

Local governments may contact the Division of Coastal Management offices for further assistance and information in completing grant applications. Completed applications shall be submitted to the appropriate office as described in the Notice of Availability of Funds and Request for Proposals. Offices are located in Raleigh, Elizabeth City, Washington, Morehead City and Wilmington.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0603 PROCEDURE FOR APPROVAL OR DISAPPROVAL

(a) The Department shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, the Department may request the applicant to submit additional information or agree to a revised project proposal or project budget.

(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by Rule .0701 of this Section.

(c) Local governments will have 20 days from the date of notification to appeal negative funding decisions to the Secretary.

Authority G.S. 113A-112; 113A-124.

SECTION .0700 - GRANT ADMINISTRATION

15A NCAC 07L .0701 CONTRACT AGREEMENT

(a) Prior to the disbursement of funds, the local government and Department will become parties to the contract.

(b) The Department shall prepare the contract and submit it to the local government, following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person who is authorized by the local government to enter into contracts, and then returned to the Department. The contract is effective, and approval of the grant application final, when signed by the Secretary of the Department or the Secretary's designee.

(c) Subcontracts shall be reviewed and approved by the Department prior to execution by the local government. Past work history with the Department of the proposed subcontractor will be considered in reviewing the subcontract. No subcontracts may be made without the written approval of the Department.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0702 PROGRESS REPORTS AND GRANT MONITORING

(a) Specific requirements for progress reports will be set out in each contract with grantees.

(b) A progress report will be required of all grantees prior to the distribution of funds.

(c) The Department shall make such site visits and consultations as deemed necessary.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0703 PAYMENT

(a) Payment by the Department will be made periodically as specified in the contract upon the timely submittal of a requisition for payment and DCM certification that reasonable and satisfactory progress is being made on the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.

(b) The Department may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0704 PROJECT COMPLETION REPORT

(a) A project completion report shall be required for all projects. The Department shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.

(b) A draft project completion report shall be submitted to the Department with or prior to submission of the final requisition for payment. This report shall include an assessment by the local government of the consistency of the project with the approved land use plan and the rules of the CRC. If the project is found to be inconsistent by the CRC, the local government

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shall include a satisfactory plan for creating consistency, including timelines for implementation. Final payment will not be made to the local government until this information is provided.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0705 ACCOUNTABILITY

Grantees will be subject to accounting techniques and procedures similar to those applicable to the Department as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes and standards generally applicable to local governments, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards will be followed.

Authority G.S. 113A-112; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .1210. Notice of Rule-making Proceedings was published in the Register on April 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 1, 2001

Time: 1:30 p.m.

Location: Dix Campus, Adams Building, Room 158, Raleigh, NC

Reason for Proposed Action: In November of 2000 a Listeriosis outbreak occurred in Forsyth County which resulted in 5 fetal deaths, 2 premature births, 2 near term infants were born affected and all 9 mothers were affected plus 2 non-pregnant adults. The outbreak was traced to homemade raw milk cheeses. All cases were associated with Hispanic community in the Winston-Salem area. The home cheese processors were purchasing the milk from local dairy farmers. Raw milk is known to contain pathogens. Laboratory tests show the same genetic pattern in the raw milk, the cheese and the patients. This Rule is currently in effect as a temporary rule.

Comment Procedures: Written comments should be submitted to Susan Grayson, Head, DENR/EHSS, 1632 Mail Service Center, Raleigh NC 27699-1632, 919-715-0926 or email: sue.grayson@ncmail.net . Comments will be accepted through August 15, 2001.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1200 – GRADE A MILK SANITATION

15A NCAC 18A .1210 RESTRICTIONS ON DISPENSING RAW MILK

Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility for which the processing of milk is permitted, graded or regulated by a state or federal agency. However, this Rule does not prohibit the farmer or the owner of the raw milk or raw milk products from destroying the milk or from dispensing it for animal feed in accordance with any applicable state and federal regulations.

Authority G.S. 130A-275.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .1327 and amend the rules cited as 15A NCAC 18A .1301-.1302, .1304-.1322, .1324. Notice of Rule-making Proceedings was published in the Register on February 15, 1999.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: August 1, 2001

Time: 1:30 p.m.

Location: Dorothea Dix Campus, Adams Building, Room 158, Raleigh, NC

Reason for Proposed Action: Rules are being updated to respond to changes in infection control practices at health care institutions and to regulate food sanitation at institutions consistent with current regulations for other food handling establishments.

Comment Procedures: Please send all comments to Jim Hayes, Branch Head, Environmental Health Services, 1632 Mail Service Center, Raleigh, NC 27699-1632 or telephone 919-715-0924. Comments will be accepted through August 15, 2001.

Fiscal Impact

- State
Local 15A NCAC 18A .1304
Substantive (>=\$5,000,000)
None 15A NCAC 18A .1301- .1302, .1305 – 1324, .1327

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1300 - SANITATION OF HOSPITALS: NURSING AND REST HOMES: SANITARIUMS SANATORIUMS: EDUCATIONAL AND OTHER INSTITUTIONS

15A NCAC 18A .1301 DEFINITIONS

PROPOSED RULES

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

- (1) "Disinfect" means a process used on inanimate surfaces to destroy or irreversibly inactivate infectious fungi and bacteria but not necessarily their spores.
- (2) "Environmental Health Specialist" means a person authorized by the Department of Environment and Natural Resources under G.S. 130A-6 to enforce environmental health rules adopted by the Commission for Health Services.
- ~~(1)(3)~~ "Institution" includes the following establishments providing room or board and for which a license or certificate of payment must be obtained from the Department of ~~Human Resources, Health and Human Services~~, other than those operated exclusively by the State of North Carolina:
 - (A) hospital, as defined in G.S. 131E-76 including doctors' clinics with food preparation facilities;
 - (B) nursing home, as defined in G.S. 131E-101;
 - (C) sanitarium, sanatorium, and any similar establishment, other than hospital and nursing home, for the recuperation and treatment of 13 or more persons suffering from physical or mental disorders;
 - (D) rest home, providing custodial care on a 24-hour basis for 13 or more persons, including homes for the aged;
 - (E) orphanage, or children's home providing care on a 24-hour basis for 13 or more children.

However, the term shall not include a child day care ~~facility~~ facility, an adult day service facility as defined in 15A NCAC 18A .3300, or a residential care facility as defined in 15A NCAC 18A .1600.
- ~~(2)(4)~~ "Department of ~~Environment, Health, Environment~~ and Natural Resources" shall mean the Secretary, or his authorized representative.
- ~~(3)(5)~~ "Local health director" shall mean local health director as defined in G.S. 130A-2(6) or his authorized representative.
- ~~(4)~~ "Sanitarian" shall mean a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and regulations.
- (6) "Patient" means a patient or resident living in an institution as defined in this Section.
- ~~(5)(7)~~ "Person" shall mean an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (8) "Personal Hygiene" means maintenance of personal health, including grooming, brushing

teeth, showering, applying makeup, or washing/drying face, hands, and body.

- ~~(6)(9)~~ "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.
- ~~(7)(10)~~ "Sanitize" means a bactericidal treatment which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

Authority G.S. 130A-235.

15A NCAC 18A .1302 APPROVAL OF PLANS

~~Plans and specifications for new construction or modifications may be submitted to the agency designated by state licensure regulations and~~ In addition to any other licensure requirements, plans shall be submitted to the local health department for review and approval before beginning construction. Construction shall comply with the Rules of this Section.

Authority G.S. 130A-235.

15A NCAC 18A .1304 INSPECTIONS

(a) Institutions shall be graded at least once each six months and food services at institutions which prepare and serve meals to 13 or more patients or residents shall be inspected at least once each quarter.

(b) The grading of institutions shall be done on inspection forms furnished by the Department to local health departments. The form shall include at least the following information:

- (1) the name and address of the facility,
- (2) the name of the person in charge of the facility,
- (3) the standards of construction and operation as listed in .1309 - .1324 of this Section,
- (4) the score, and
- (5) the signature of the authorized agent of the Department.

(c) Whether or not a permit is required under G.S. 130A-248, inspections of food preparation and central dining areas in institutions serving meals to 13 or more patients or residents shall be documented separately using the inspection forms and grading system used for grading restaurants as specified in current "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600.

Authority G.S. 130A-235.

15A NCAC 18A .1305 GRADING RESIDENTIAL CARE FACILITIES IN INSTITUTIONS

If an institution includes one or more residential care facilities ~~housing 13 persons or less each, each providing room or board for 12 persons or fewer,~~ the rules in 15A NCAC 18A .1600 shall apply and grading of the residential care facilities shall be in accordance with the residential care rules.

Authority G.S. 130A-235.

15A NCAC 18A .1306 PUBLIC DISPLAY OF GRADE CARD

(a) Whenever an inspection of an institution is made, the ~~sanitarian~~ 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 it may be readily observed by the public upon entering the facility. The administrator shall be responsible for keeping the grade card posted at the location designated by the ~~sanitarian~~ Environmental Health Specialist at all times. If the administrator objects to the location designated by the Environmental Health Specialist, then the administrator may suggest an alternative location which meets the criteria of this Rule.

(b) Private institutions are inspected and graded by ~~sanitarians~~ Environmental Health Specialists employed by the local health departments, under the direction of the local health directors.

Authority G.S. 130A-235.

15A NCAC 18A .1307 REINSPECTIONS

Upon receipt of a request from the management for a reinspection for the purpose of raising the ~~posted alphabetical grade, grade of the institution,~~ the ~~sanitarian~~ Environmental Health Specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 30 days.

Authority G.S. 130A-235.

15A NCAC 18A .1308 APPROVED INSTITUTIONS

The sanitation grading of all institutions shall be based on a system of scoring wherein all institutions receiving a score of at least 90 percent shall be awarded Grade A; all institutions receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all institutions receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and all institutions receiving a score of less than 70 percent, ~~or Grade C,~~ do not meet the minimum sanitation standards. If an institution or an institutional food service fails to maintain a sanitation score of at least 70 percent or if the Environmental Health Specialist determines that conditions found at the institution at the time of any inspection are dangerous to the health of residents or the public, the Environmental Health Specialist shall notify the licensing agency within 24 hours. A copy of the inspection report documenting the dangerous conditions shall be sent to the licensing agency within two working days following the inspection.

Authority G.S. 130A-235.

15A NCAC 18A .1309 FLOORS

(a) All floors in intensive care units, bathrooms, showers, hydrotherapy areas, operating rooms, soiled utility rooms and laundry areas shall be of ~~smooth~~ smooth, non-absorbent materials and so constructed as to be ~~easily cleanable~~ easy to clean. Floors shall be free of obstacles to cleaning, and shall be kept clean and in good repair. Carpeting shall be maintained

clean, odor free, dry and in good repair. The floor area shall be sufficient to accommodate all necessary operations.

(b) In all rooms in which ~~water is routinely discharged to the floor, or in which~~ floors are subjected to flooding-type cleaning, floors shall be of nonabsorbent materials, shall be sloped to drain and be provided with floor drains.

Authority G.S. 130A-235.

15A NCAC 18A .1310 WALLS AND CEILINGS

The walls and ceilings of all rooms and areas shall be kept clean and in good repair. All walls shall be easily cleanable ~~and light colored,~~ and shall have washable surfaces to the highest level reached by splash or spray in rooms or areas where such occur.

Authority G.S. 130A-235.

15A NCAC 18A .1311 LIGHTING, VENTILATION AND MOISTURE CONTROL

(a) All areas shall be provided with sufficient illumination to effectively perform all operations, including cleaning, and shall have at least ~~five~~ 10 foot candles of light at 30 inches above the floor in all areas other than food service areas. ~~In food service areas, at least the following shall be provided:~~

- ~~(1) — 20 foot candles of light on all working surfaces; and~~
- ~~(2) — 10 foot candles of light on all other surfaces and equipment in:~~
 - ~~(A) — food preparation areas;~~
 - ~~(B) — utensil washing areas;~~
 - ~~(C) — handwashing areas; and~~
 - ~~(D) — toilet rooms.~~ Food service areas shall be lighted as required for restaurants in "Rules Governing The Sanitation of Restaurants and other Foodhandling Establishments" 15A NCAC 18A .2600.

~~(b) Ventilation shall be provided and installed as required by the North Carolina State Building Code. Copies of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.~~

~~(c) Ambient air temperatures shall be maintained in the range of 65° F to 85° F.~~

~~(d) Moisture shall be controlled such that there is no evidence of microbial growth on interior surfaces and objects.~~

~~(e) Smoking indoors shall be restricted to areas which are not used by non-smokers. Smoking areas shall be ventilated to prevent escape of environmental tobacco smoke to surrounding spaces.~~

~~(f) Ventilation equipment shall be kept clean and in good repair.~~

Authority G.S. 130A-235.

15A NCAC 18A .1312 TOILET; HANDWASHING; LAUNDRY; AND BATHING FACILITIES

(a) All institutions shall be provided with toilet, handwashing, and bathing facilities which are ~~adequate,~~ conveniently located and readily accessible. These facilities, and laundry facilities when provided, shall ~~comply with the North Carolina State~~

~~Building Code, Volume II, and shall~~ be kept clean and in good repair.

(b) Toilet facilities shall comply with the requirements of the state agency licensing the facility. ~~The floor area shall be at least 18 square feet for the minimum sized toilet room containing one water closet and one lavatory or one water closet and one urinal, and shall contain 10 square feet in addition for each additional plumbing fixture.~~ Toilet rooms shall not be used for storage. Fixtures and furnishings shall be kept clean and in good repair. Durable, legible signs shall be posted or stenciled conspicuously in each toilet room for food service employees directing them to wash their hands before returning to work.

(c) Institutions in which ~~bedpans, bedpans, urinals or emesis basins~~ are used shall provide ~~adequate~~ facilities for emptying, cleaning, and ~~sanitizing~~ ~~disinfecting~~ ~~bedpans, bedpans, urinals and emesis basins.~~ ~~Bedpans, urinals and emesis basins shall be cleaned after each use and shall be disinfected before use for other patients. In the case of those institutions in which bedpans are used only occasionally, the minimum acceptable facilities consist of a water closet with bedpan lugs, a bedpan cleanser spray, and a container of sufficient size to allow bedpans to be submerged in a chemical sanitizing solution. In the case of those institutions in which bedpans are used routinely, the minimum acceptable facilities consist of a clinic service sink (flushing rim), a bedpan cleanser spray, and a sink of sufficient size to allow the bedpans to be submerged in a chemical sanitizing solution. Where bedpans are cleaned in patient rooms, minimum bedpan cleaning facilities shall consist of a water closet with bedpan lugs or spray arms. Where facilities for cleaning bedpans are not provided in patient rooms, bedpans shall be taken to a soiled utility room and be cleaned and disinfected using an EPA registered hospital disinfectant after each use. Where disposable bedpans are reused, they shall be labeled with the patient's name and date and shall not be used by more than one patient. Bedside commodes shall be cleaned after each use and shall be cleaned and disinfected before use by successive patients. Hand sinks shall not be used for cleaning bedpans or bedside commodes.~~

(d) ~~Handwashing facilities shall be accessible to all areas where personnel can be exposed to bodily excretions or secretions and in sterile supply processing areas, medication rooms, laundry areas, nutrition stations, soiled utility rooms and clean utility rooms. All lavatories shall be supplied with hot and cold running water through a mixing faucet, or with tempered warm water, soap, and sanitary towels or approved hand-drying devices. Handwashing facilities shall be provided in kitchens and any other food preparation areas in addition to any lavatories which may be provided at employees' toilet rooms. Sinks used for washing utensils and equipment shall not be accepted as a substitute for required handwashing facilities for employees, facilities. Handwash lavatories shall be used only for handwashing. Lavatories provided for use of patients or residents shall be used only for handwashing, personal hygiene, rinsing feeding tubes and obtaining water. Lavatories used for handwashing or personal hygiene shall not be used for disposal of body fluids or cleaning soiled linens.~~

(e) ~~Hot water heating facilities adequate to meet all requirements for hot water in these Rules shall be provided. Water heating facilities shall provide hot water within the temperature range of 100° F to 116° F at all lavatories and bathing facilities.~~

(f) ~~Bathing facilities, facilities as required by the licensing agency shall be provided, maintained and kept clean. Bathing facilities including those provided in gymnasiums and locker rooms, shall be supplied with hot and cold running water and a mixing device, or with tempered water, tempering device. Shared bathing equipment which has contact with patient's skin shall be cleaned with detergent and an EPA registered hospital disinfectant between patient uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Chemical test kits shall be used to test concentration of disinfectants mixed on site.~~

Authority G.S. 130A-235.

15A NCAC 18A .1313 WATER SUPPLY

(a) Water supplies shall meet the requirements in 15A NCAC 18C or 15A NCAC 18A .1700.

(b) Non-community public water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.

~~(b)(c)~~ In institutions which use a non-community water supply, At least once a year, a sample of water shall be collected by the Department at least once a year and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations.

~~(e)(d)~~ Cross-connections with sewage lines, unapproved non-potable water supplies, or other potential sources of contamination are prohibited. All plumbing fixtures for potable water shall be provided and installed as required by the North Carolina State Building Code. Copies may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.

~~(d)(e)~~ Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and to any other areas in which water is required for cleaning in sufficient quantities to carry out all operations.

(f) The local health department shall be immediately notified if the primary water supply is interrupted for more than four hours. Each institution shall have a plan to obtain a backup water supply in the event that the water supply is lost for more than four hours. The backup water supply plan shall provide for a minimum of 25 gallons of potable water per day per patient or resident for all purposes for a minimum of three days. If an assessment determines that tap water is not to be used for drinking, sources shall be prominently labeled or hooded to restrict use and potable water shall be provided.

Authority G.S. 130A-235.

15A NCAC 18A .1314 DRINKING WATER FACILITIES: ICE HANDLING

(a) Drinking fountains shall be of sanitary angle-jet design, ~~shall~~ ~~be~~ kept clean, and properly regulated. All multi-use utensils used for service of water in patients' rooms, including glasses, pitchers, and drinking tubes, shall be ~~thoroughly~~ cleaned and sanitized ~~daily and~~ before being used by ~~succeeding any other~~ individuals. ~~Disposable water pitchers shall be marked with the patient's name, used only by that patient and shall be disposed of and replaced when visibly soiled.~~

(b) Ice shall be handled, transported, stored, and dispensed in such a manner as to be protected against contamination. ~~If block ice is used, outer surfaces shall be thoroughly rinsed before crushing. Ice crushers, machines, buckets, other containers, and scoops shall be kept clean and shall be stored and handled in a sanitary manner. Facilities for the making or storage of ice shall be kept clean and cleaned on a regular schedule such that they are kept free of scum, rust, mold or other contamination. Ice machines, buckets, other containers and scoops shall be maintained~~ in good repair and shall be ~~so located as to be~~ protected from the elements, splash, drip, dust, vermin, other contamination, and from use by unauthorized personnel. ~~Ice machines and storage chests which are accessible to patients or the public shall provide ice through automatic ice dispensing equipment which prevents the contamination of stored ice.~~

Authority G.S. 130A-235.

15A NCAC 18A .1315 LIQUID WASTES

(a) ~~All sewage and other liquid wastes wastewater shall be disposed of in a public sewer system or, in the absence of a public sewer system, by a sanitary sewage disposal method approved as provided in "Sewage Disposal Systems", 15A NCAC 18A .1900, an approved, properly operating sanitary sewage system.~~

(b) ~~All sewage and other liquid wastes shall be so disposed of as not to create a public health hazard.~~

Authority G.S. 130A-235.

15A NCAC 18A .1316 SOLID WASTES

(a) All solid wastes containing food scraps or other decomposable materials 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-continual~~ use; provided that such containers need not be covered when stored in a special vermin-proofed room, such as a refrigerated garbage room, or enclosure.

(b) All dry rubbish (including scrap paper, cardboard boxes, packing crates, etc.) shall be stored in containers, rooms, or designated ~~areas, in an approved manner, areas.~~

(c) The rooms, enclosures, designated areas, and containers shall be adequate for the storage of all solid wastes accumulating on the premises. Cleaning facilities for waste containers shall be provided. Containers, rooms, or designated areas shall be ~~cleaned after the emptying or removal of garbage and rubbish-~~ kept clean.

(d) All solid wastes shall be disposed of with sufficient frequency and in such a manner as to prevent insect breeding or public health nuisances.

(e) ~~Medical wastes shall be handled and disposed of as required in North Carolina "Solid Waste Management Rules" 15A NCAC 13B .1200 Medical Waste Management.~~

Authority G.S. 130A-235.

15A NCAC 18A .1317 VERMIN CONTROL: PREMISES: ANIMAL MAINTENANCE

(a) Effective measures shall be taken to keep flies, rodents, ~~cockroaches,~~ and other vermin out of the establishment and to

prevent their breeding or presence on the premises. ~~Unless flies and other flying insects are absent from the immediate vicinity of the establishment, all~~ All openings to the outer air shall be ~~effectively~~ protected against the entrance of ~~such flies and other flying~~ insects by self-closing doors, closed windows, 16-mesh or finer screening, controlled air currents, or other effective means.

(b) 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 in accordance with the "Federal ~~Environmental Pesticide Control Insecticide, Fungicide and Rodenticide Act~~" and the "North Carolina Pesticide Law". Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

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

(d) ~~Cleaning shall minimize accumulation of feces and other allergens generated by insects and other vermin.~~

(e) ~~Animal pens, litter boxes, bird cages and other areas on the premises shall be cleaned to minimize accumulation of animal wastes, pet dander and allergens.~~

(f) ~~Copies of veterinary records for all animals shall be kept on the premises.~~

Authority G.S. 130A-235.

15A NCAC 18A .1318 MISCELLANEOUS

(a) Suitable rooms or spaces shall be provided for the storage of all necessary equipment, furniture and supplies, and kept clean. ~~All patient care or consumable items shall be stored at least eight inches above the floor to prevent water contamination from cleaning floors and shall not be stored below exposed sewer lines.~~

(b) ~~Adequate facilities, such as mop Mop~~ receptors or ~~sinks, sinks~~ shall be provided and used for the cleaning of mops and the disposal of mop water. Other plumbing fixtures shall not be used for these purposes.

(c) ~~Medication carts shall be cleaned when visibly soiled. Food and utensils used on medication carts shall be handled in a sanitary manner. Unused medication cups shall be kept covered or inverted. Sharps containers on medication carts shall be affixed or secured to prevent spillage.~~

(d) ~~Feeding syringes which are reused shall be labeled with the patient's name and date opened, shall be disassembled and rinsed after each use, and shall be disposed of within 24 hours of first use. Tube feeding bags shall be changed within 24 hours of first use. Oral suction catheters which are reused shall be flushed after each use and shall be disposed of within 24 hours of first use. Feeding syringes and oral suction catheters shall be stored in a clean container.~~

Authority G.S. 130A-235.

15A NCAC 18A .1319 FURNISHINGS AND PATIENT CONTACT ITEMS

(a) All furniture, bed springs, mattresses, ~~sleeping mats,~~ draperies, curtains, shades, venetian blinds, or other furnishings shall be kept clean and in good repair. ~~Mattresses shall have non-absorbent cleanable covers.~~

(b) Clean bed linen in good repair shall be provided for each individual and shall be changed when soiled. Soiled linen shall be placed in a covered container or bag at the point of use and stored and handled so as to contain and minimize aerosolization of and exposure to any waste products. Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable carts or bags. Carts used for soiled laundry shall be labeled for soiled laundry use only. If hot water is used, linen shall be washed with a detergent in water at least 71°C (160°F) for 25 minutes. If low temperature (<70°C) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentrations recommended by the manufacturer shall be used. Clean linen shall be stored and handled in a separate room or area, or in another manner that will prevent contamination of clean linen. ~~Soiled linen shall be stored and handled in such a manner as not to spread contamination, as by the use of closed hampers. Laundry areas and equipment shall be kept clean.~~

(c) ~~The provisions regarding linen do not apply to educational institutions in which linens are provided by students. Patient contact items shall be kept clean and in good repair. Soiled patient contact items shall be taken to a designated area for cleaning and shall be stored separately from clean items. A room or area shall be provided for cleaning patient contact equipment such as wheelchairs and other large items. Patient contact items such as diaper changing surfaces which become contaminated during use shall be cleaned and disinfected after each use. Shared toys shall be washed and rinsed with soap and water and disinfected with 70 percent alcohol or 100 parts per million chlorine after each day's use. Shared plush toys shall be laundered after each day's use. Shared toys which are not washable shall be gas sterilized or disposed of when soiled.~~

Authority G.S. 130A-235.

15A NCAC 18A .1320 FOOD SERVICE UTENSILS AND EQUIPMENT

(a) ~~All food service equipment and utensils used for preparing meals for 13 or more people shall be so designed and of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be kept in good repair; and the food contact surfaces of such equipment and utensils, shall, in addition, be easily accessible for cleaning, non-toxic, corrosion resistant, relatively nonabsorbent and free of open crevices; provided, that hard maple or equivalent may be used for bakers' tables and cutting blocks or boards comply with the requirements of "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. Residential style rehabilitation activity kitchens with domestic utensils and equipment can be used by groups of 12 or less people to prepare meals only for members of the group. Potentially hazardous foods prepared in rehabilitation activity kitchens shall not be served to groups of more than 12 people. This shall not preclude the use of an activity kitchen as a serving area for meals catered from a main kitchen and served to groups of 13 or more people in connection with a planned event from which the public is excluded. For planned events, the equipment in the activity kitchen can be used for heating prepared foods received from a main kitchen or a commercial source. Bread machines, soup kettles and other food contact items used at nutrition stations shall be so constructed as to be easily cleanable.~~

~~(b) All multi-use eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage. At activity kitchens or nutrition stations not used to prepare meals, provisions shall be made for cleaning all food service utensils and equipment and sanitizing utensils and equipment not continuously subjected to high temperatures. Where utensils and equipment are not returned to a central kitchen for cleaning, designated nutrition stations shall be equipped with at least a two compartment sink with 24 inch drainboards or counter top 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. At nutrition stations, dish machines listed with NSF International shall meet this provision. Any area where food is portioned, served or handled shall be equipped with a separate handwash lavatory with hot and cold mixing faucet, soap and individual towels or hand drying device.~~

(c) All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be ~~thoroughly~~ cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once each day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous foods shall be cleaned and sanitized prior to each use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

~~(d) Necessary facilities shall be provided and used for the cleaning and sanitizing of utensils and equipment. All such utensils and equipment shall then be stored so as to drain, dry, and be protected from splash, dust, or contamination. In place cleaning of fixed equipment shall be accepted when found effective.~~

~~(e) All single service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once.~~

~~(f) All cloths used by chefs and other employees in the kitchen shall be clean.~~

~~(g) Water heating facilities shall be provided, with sufficient capacity to supply hot water at temperatures required for cleaning and sanitizing during all periods of operation.~~

~~(h) The National Sanitation Foundation has developed detailed specifications for many food service equipment items. Equipment which meets these standards or equal shall be accepted as meeting the requirements of this Rule. All equipment should be so installed and located as to permit easy access for cleaning.~~

~~(i) Facilities and methods for the cleaning and sanitization of utensils and equipment shall comply with "Sanitation of Restaurants and Other Foodhandling Establishments," 15A NCAC 18A .2600.~~

~~(j) Utensils and equipment shall be handled and stored in compliance with "Sanitation of Restaurants and Other Foodhandling Establishments," 15A NCAC 18A .2600.~~

~~(k) These requirements do not prohibit residential type kitchen layouts and equipment in individual living units housing not more than 13 persons which feature family type care. In such cases, however, special attention must be given to the facilities for cleaning and sanitizing multi-use eating and drinking utensils. Acceptable facilities include three-compartment sinks and dishwashing machines constructed and operated in accordance with National Sanitation Foundation Standard or equal. For approved single-tank, stationary-rack,~~

~~single-temperature, door-type machines, the minimum temperature for both wash and rinse water is 165 degrees F.~~

Authority G.S. 130A-235.

15A NCAC 18A .1321 FOOD SUPPLIES

~~(a) All food and food supplies shall be from approved sources which comply with North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. All meat and meat food products and all poultry and poultry products shall have been inspected for wholesomeness under an official federal, state, or local regulatory program; and, in all cases, the source shall be identifiable from labeling on carcasses, cuts, unit packages, bulk packages, or from bills of sale.~~

~~(b) All shellfish and crustacea meat shall be obtained from sources in compliance with 15A NCAC 18A .0100 .0800; provided, that if the source of clams, oysters, or mussels is outside the state, the shipper's name shall be on the Interstate-Certified Shellfish Shippers List, and; provided, that if the source of cooked crustacea meat is outside the state, the establishment in which the crustacea meat was packed is approved by the state or territory of origin, attested by the appearance of an official permit number on the container. Food brought from home by employees or visitors of patients or residents shall be stored separately from the facility's food supply and shall be labeled with the name of the person to receive the food and the date the food was brought in and shall be kept only as long as it is clean, wholesome and free from spoilage.~~

Authority G.S. 130A-235.

15A NCAC 18A .1322 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.~~

~~(b) An exception may be made in the case of cream served with coffee, cereals, etc., as the distributor cannot deliver cream in the unit sizes that would be required. For such service, transferring to individual service units from the original container of not more than one-half gallon capacity, or from pumps, or other approved dispensers is permissible. The mixing of cream and milk or the pouring of either into jars, bottles, or other containers for storage therein shall be prohibited.~~

~~(c) An exception also may be made:~~

- ~~(1) where patients or residents of institutions, defined in Rule .1301 of this Section, are unable to handle individual original containers of milk and milk products because of age or physical conditions; or~~
- ~~(2) where the volume of milk consumed each day is less than the capacity of an approved bulk milk dispenser; or~~
- ~~(3) where meals are served in a communal or family type dining area.~~

~~In such cases, 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.~~

~~Such pouring shall be done by responsible food service personnel of the institution immediately before the milk is to be consumed by the patients or residents. After such dispensing of the milk, any containers with milk remaining in them shall be immediately refrigerated. The serving of reconstituted milk in place of fresh milk is prohibited. The transfer of milk from its original one-gallon container into any type of container other than glasses or cups as specified above is also prohibited.~~

~~(d) 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, and only the outlet seal shall be broken in the establishment.~~

~~(e) 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.~~

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

Milk and milk products shall comply with 15A NCAC 18A .1200 "Rules Governing Grade A Milk Sanitation".

Authority G.S. 130A-235.

15A NCAC 18A .1323 FOOD PROTECTION

~~(a) All food while being stored, prepared, displayed, served, and during transportation between kitchen, diet kitchen, or patients' rooms, transported, displayed, and served, shall be protected from contamination. All perishable foods shall be stored at such temperatures as which will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above) except during necessary periods of preparation and serving. Potentially hazardous foods served shall be either consumed or discarded within two hours of being removed from temperature control. Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C). Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility, except that food in intact packages from regulated food manufacturing plants may initially be reheated to 140° F (60° C). Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish or eggs, and other potentially hazardous prepared foods shall be prepared, preferably from chilled products, with a minimum of manual contact, and on surfaces and with utensils which are clean and which, prior to use, have been sanitized. Individual portions of food once served to a person shall not be served again. No live animals or fowl shall be allowed in any room in which food or drink is prepared or stored or in central dining rooms. Medications shall be stored in a manner which will not contaminate food or food products such as in separate covered containers or in separate refrigerators.~~

~~(b) Conveniently located refrigeration facilities, units, hot food storage and display facilities, units and effective insulated facilities, units shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, display, service, and transportation. Each cold-storage facility refrigeration unit used for the storage of~~

~~perishable food in non-frozen state~~ shall be provided with an indicating thermometer of such type and so situated that the thermometer can be easily read. read, read except that indicating thermometers shall not be required for food iced in coolers for transport.

(c) Containers of food shall be stored above the floor, on clean racks, dollies, slatted shelves, or other clean surfaces in such a manner as to be protected from splash ~~and or~~ other contamination.

(d) No live animals shall be allowed in any room where food is prepared or stored. Live animals shall be allowed in dining areas if their presence will not result in contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles in the following situations:

- (1) Fish or crustacea in aquariums or display tanks, or other animals in enclosed terrariums or glass enclosed aviaries;
- (2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
- (3) In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and
- (4) Pets in the common dining areas of group residences at times other than during meals if:
 - (A) Effective partitioning or self-closing doors prevent pets from entering food storage and food preparation areas;
 - (B) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
 - (C) Dining areas including tables, countertops, and similar surfaces are cleaned after all pets have left the area and before the next meal service.

Authority G.S. 130A-235.

15A NCAC 18A .1324 EMPLOYEES

~~(a) All food service~~ While on duty, all employees shall wear ~~appropriate visibly clean outer clothing such as caps, coats, aprons, or other protective clothing while on duty~~ and shall be clean as to their persons. No employee shall use tobacco in any form while engaged in the preparation and handling of food. ~~The hands of all employees handling food, utensils, or equipment shall be kept clean, and shall be washed before beginning work and after each visit to the toilet. Employees shall wash their hands:~~

- (1) Before beginning work, and
- (2) After each visit to the toilet, and
- (3) Before and after patient contact, and
- (4) After contact with a source of microorganisms (body fluids and substances, mucous membranes, nonintact skin, inanimate objects that are likely to be contaminated), and

(5) After removing gloves.

(b) Routine handwashing shall include a vigorous rubbing together of all surfaces of lathered hands for at least 10 seconds followed by thorough rinsing under a stream of water and drying with individual disposable towels or hand drying devices.

~~(b)(c)~~ 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 an acute respiratory infection with cough ~~and or~~ 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.

Authority G.S. 130A-235.

15A NCAC 18A .1327 INCORPORATED RULES

(a) The North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

(b) The North Carolina "Rules Governing Public Water Systems" 15A NCAC 18C are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 at no cost.

(c) The North Carolina "Rules Governing Protection of Water Supplies" 15A NCAC 18A .1700 are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

(d) The North Carolina "Solid Waste Rules" 15A NCAC 13B .1200 Medical Waste Management are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Solid Waste Section, 1646 Mail Service Center, Raleigh NC 27699-1646 at a cost of nine dollars (\$9.00).

(e) The North Carolina "Rules Governing Grade A Milk Sanitation" 15A NCAC 18A .1200 are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no cost.

Authority G.S. 130A-235.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: DHHS - *Commission for the Blind*

Rule Citation: 10 NCAC 19G .0102, .0105, .0501-.0503, .0801-.0814, .0816-.0818, .0820-.0826

Effective Date: August 1, 2001

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: G.S. 111-28; 143-545.1; 143-546.1; 143B-157; 150B-1(e); 150B-2; 150B-23; 34 CFR 361.42; 361.5; 361.52; 361.53; 361.54; 361.57; 361.48; P.L. 102-569

Reason for Proposed Action: *Budget shortfall; changes in regulations implanting the Rehabilitation Act*

Comment Procedures: *Any person may submit comments to the Commission either orally or in writing at the public hearing. All other written comments must be received by the Commission no later than the commencement of the public hearing. Written comments will be mailed to E. Ann Christian, PO Box 2455, Raleigh, NC 27602.*

CHAPTER 19 – SERVICES FOR THE BLIND

SUBCHAPTER 19G – VOCATIONAL REHABILITATION

SECTION .0100 – SERVICES

10 NCAC 19G .0102 TRAINING AND TRAINING MATERIALS

(a) The ~~services for the blind~~ Division will shall furnish training to all eligible individuals to the extent necessary to achieve their vocational rehabilitation outcome and to the extent that entry level qualifications of the job, profession or employment are achieved.

(b) Training provided by the ~~services for the blind~~ Division includes vocational, prevocational, personal adjustment training, and other rehabilitation training which contributes to the determination of the rehabilitation potential or to the individual's personal and vocational adjustment; it covers training provided directly by the ~~services for the blind~~ Division or procured from other public or private training facilities, including ~~workshops and other community~~ rehabilitation facilities programs.

(c) The ~~services for the blind~~ Division will shall provide necessary books and other training materials to ~~handicapped individuals~~ applicants accepted for evaluation of the rehabilitation potential and to financially eligible ~~clients~~ consumers.

(d) The ~~services for the blind~~ Division will shall provide financial support for post-secondary education under the following terms and conditions:

(1) Financial support for ~~clients~~ consumers attending institutions of higher learning will shall not exceed the maximum rate for ~~tuition;~~ tuition and fees, ~~room, and board~~ established at state supported colleges and universities in North Carolina;

~~(2) If the training program is not offered by a state college or university in North Carolina, support will be provided at whatever level the accepting college or university has established;~~

~~(3)(2) Requests for support will be considered only when the client-consumer has applied for grants and scholarships at the accepting institution. The services for the blind Division will shall~~ deduct the grant amount from the client's consumer's training allotment. All clients enrolled or enrolling in institutions will apply for the following grants annually:

~~(A) North Carolina student incentive grant;~~

~~(B) North Carolina legislative grant;~~

~~(C) Basic educational opportunity grant.~~

~~(4)(3) Clients Consumers~~ who are sponsored for an undergraduate degree will shall not receive more than ~~nine~~ 10 semesters or ~~43~~ 15 quarters of sponsorship to complete their undergraduate ~~degree;~~ degree. The Division may grant an exception to the semester/quarter requirements when necessary to accommodate the special training needs of consumers with severe disabilities.

(4) ~~Clients~~ Consumers who are sponsored for undergraduate programs must maintain a grade point ratio of 2.0. Agency sponsorship will be withdrawn from any ~~client~~ consumer in an undergraduate program whose GPR falls below 2.0 for two consecutive semesters or quarters. If the ~~client-consumer~~ continues in the educational institution under his own sponsorship and brings his cumulative GPR to 2.0, the consumer may again be considered for sponsorship through the VR Program of this agency. ~~Clients~~ Consumers under our sponsorship for graduate or professional programs must maintain a grade point ratio commensurate with the standards established by the educational institution they are attending for degree requirements. Agency sponsorship will shall be withdrawn from any ~~client-consumer~~ in graduate or professional programs whose GPR falls below the

standards established by the educational institution for degree requirements for two consecutive semesters or quarters. If the client consumer continues in the educational institution under his own sponsorship and brings his cumulative GPR to the standard established by the educational institution, the client consumer may again be considered for sponsorship through the VR Program of this agency. Clients-Consumers may receive agency sponsorship for vocational training and/or on-the-job training outside of programs offered in undergraduate, graduate, and professional schools. A client consumer who is participating in such a program must maintain grades or standards of performance commensurate with the standards established by the institution or trainer for satisfactory completion of the training program within an established time frame. The agency will-shall not sponsor a client consumer in a vocational training or on-the-job training program for more than one additional unit of time as defined by the particular institution or trainer in order to complete the program; -program. The Division may grant an exception to the length of training sponsorship when necessary to accommodate the special training needs of consumers with severe disabilities.

(6)(5) The services for the Blind-Division may provide graduate training for clients consumers when said training is required to enter a position. It will-shall be required that the client's consumer's case file contain a letter from an official of the appropriate graduate school of higher learning designating the number of semesters or quarters required to achieve the graduate degree. The services for the blind-Division will shall not sponsor clients consumers in excess of one quarter or one semester above that specified in the letter as a time required to receive the graduate degree. The Division may grant an exception to the length of training when necessary to accommodate the special training needs of consumers with severe disabilities.

(e) Other training services, including training at community rehabilitation facilities public workshops programs. are purchased on the basis of agreements made between the trainer and staff members of the Services for the Blind-Division.

(f) Training at the Rehabilitation Center for the Blind and with the business enterprises-Business Enterprises program is purchased on the basis of rates established by the Services for the Blind-Division in consultation with the supervisors of the training units in this Rule. The rates are usually based on per diem costs.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; C.F.R. 361.48(f); Eff. February 1, 1976; Readopted Eff. November 16, 1977;

Amended Eff. February 1, 1982; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0105 MAINTENANCE

(a) Actual increased costs of maintenance-Maintenance will shall be provided by the services for the blind-Division only in order to enable an individual applicant or eligible consumer to derive the full benefit of other vocational rehabilitation services being provided. Service costs shall be limited to the amount of increased costs that are in excess of the normal expenses that are necessitated by the applicant or the eligible consumer's participation in a rehabilitation program.

(b) The major types of living expenses covered by maintenance grants-payments are as follows:

- (1) board;
- (2) room;
- (3) laundry;
- (4) clothing; and
- ~~(5) health and personal maintenance, and~~
- ~~(6)(5)~~ other subsistence expenses necessary to achieve the individual's eligible consumer's vocational rehabilitation objective-outcome.

(c) The services for the blind-Division may provide maintenance or partial maintenance following placement only until the client-eligible consumer receives his first full minimum remuneration. In case of a self-employed person, maintenance may not exceed a period of 30 days.

(d) The Division shall maintain guidelines for these expenditures with the provision that exceptions may be granted.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.41(a)(5); 34 C.F.R. 361.48(g); 34 C.F.R. 361.5(b)(35); Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. February 1, 1982; Temporary Amendment Eff. August 1, 2001.

SECTION .0500 – ECONOMIC NEED

10 NCAC 19G .0501 BENEFITS

(a) The Division of Services for the Blind shall give consideration to all other benefits available to the individual consumer with a visual disability by way of pension, compensation, or insurance to meet, in whole or in part, the cost of any vocational rehabilitation services provided to the individual-consumer except the following:

- (1) evaluation, including diagnostic and related services; assessment for determining eligibility and vocational rehabilitation needs;
- (2) counseling and guidance; including information and support services to assist the applicant or consumer in exercising informed choice;
- (3) placement-referral and other services to secure needed services from other agencies if those services are not available;
- (4) job-related services, including job search and placement assistance, job retention services, and follow-up services;

- (5) rehabilitation technology, including telecommunications, sensory, and other technological aids; and
- (6) post-employment services listed in Subparagraphs (1) through (5) above.

(b) When and to the extent that ~~an individual—a consumer~~ is eligible for such benefits, such benefits shall be utilized ~~insofar as they are adequate, timely, or otherwise properly conducive to achieving the rehabilitation objective of the individual. Such benefits include but need not be limited to: unless such a determination would interrupt or delay:~~

- (1) the progress of the consumer toward achieving the employment outcome in the individualized plan for employment;
- (2) an immediate job placement; or
- (3) the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided a medical professional.

(c) If benefits exist, but are not available at the time needed to achieve the consumer's rehabilitation outcome, the services shall be provided until those benefits become available. Such benefits include but need not be limited to:

- (1) medicare, medicaid hospital and physician's services plans in relation to physical restoration services; and
- (2) workmen's compensation, veterans' benefits, SSI, private insurance benefits, old age and survivors disability insurance benefits and unemployment compensation in relation to basic maintenance.

(d) "Consumer" means a person eligible for vocational rehabilitation services.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.53; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; April 1, 1990; February 1, 1982; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0502 ECONOMIC NEEDS POLICIES

(a) The Division of Services for the Blind shall establish economic need for each eligible ~~individual—consumer~~ either simultaneously with or ~~within a reasonable time~~ prior to the provision of those services for which the Division requires a needs test. ~~This needs test shall be in accordance with S.L. 1989, c. 500, s. 43.— The financial need of a consumer shall be determined by the financial needs test specified in Rule .0503 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer.~~

(b) The Division of Services ~~of for~~ the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility ~~and~~ priority for services except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work

situations through the use of trial work experiences or an extended evaluation and ~~vocational rehabilitation needs including, if appropriate,~~ an assessment by personnel skilled in rehabilitation technology;

- ~~(2) —counseling, guidance and referral~~
- ~~(2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;~~
- ~~(3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice;~~

- ~~(3)(4) tuition and supplies for publicly—operated Community Rehabilitation Program training;~~
- ~~(4)(5) tuition and fees for:~~

(A) community college/college parallel and vocational programs up to the catalog rate; and

(B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible ~~individuals—consumers~~ applying for training programs listed in Parts (b)(~~5~~)(4)(A) and (B) of this Rule to first apply for all eligible—available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(~~5~~)(4)(B) of this Rule when necessary to accommodate the special training needs of certain severely disabled individuals who must be enrolled in high-cost, special programs designed for severely physically disabled students;

- ~~(5)(6) interpreter services ~~for the deaf; including sign language and oral interpreter services, for applicants or consumers who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who are deaf-blind;~~~~

- ~~(6)(7) reader services, rehabilitation teaching services, and orientation and mobility ~~services of the blind; services;~~~~

- ~~(7) recruitment and training services to provide new — employment — opportunities — in rehabilitation, health, welfare, public safety, law enforcement and other public service employment;~~

- (8) job-related services, including job search, job placement ~~in — suitable — employment;~~ employment assistance and job retention services;

- (9) DSB Rehabilitation Center ~~or mini center~~ services including transportation and training supplies contingent on ~~an individual's—a~~ consumer's participation in the ~~center~~ program;
- ~~(10) extended evaluation services;~~

- ~~(11)(10) diagnostic transportation;~~
- ~~(12)(11) on-the-job training;~~

- ~~(13)~~(12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- ~~(14)~~(13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- ~~(15)~~(14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- ~~(16)~~(15) Supported Employment Services;
- ~~(17)~~(16) ~~On the job and other related~~ personal assistance services provided while ~~an individual~~ a consumer with a disability is receiving vocational rehabilitation services; ~~and~~
- ~~(18)~~(17) referral and other services designed to assist ~~individuals~~ applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act (P.L. 102-569), if such services are not available under this ~~Act~~ Act and to advise those individuals about client assistance programs established under the Act;
- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment except for those services based on economic need; and
- (19) technical assistance and other consultation services to consumers who are pursuing self-employment or telecommuting or establishing a business operation as an employment outcome.

(c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) Physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance for additional costs incurred while participating in rehabilitation;
- (3) transportation, in connection with the rendering of any vocational rehabilitation service, except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a disabled ~~individual's~~ consumer's family necessary to the adjustment or rehabilitation of the ~~individual~~ consumer with a disability;
- (5) Rehabilitation technology including telecommunications, sensory, and other technological aids and devices;
- (6) post-employment services necessary to assist ~~individuals~~ consumers with visual disabilities to maintain, regain or advance in ~~suitable~~ employment except for those services not conditioned on economic need listed in (b) of this Rule;
- (7) occupational licenses;

- (8) tools, equipment, and initial stocks ~~(including livestock) and supplies; supplies and necessary shelters in connection with the foregoing items; for items listed in Subparagraphs (1) through (7) of this Paragraph;~~
- (9) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective;
- (10) books and other training materials; and
- ~~(11)~~ Rehabilitation Technology Services; and
- ~~(12)~~(11) other goods and services not ~~contraindicated~~ prohibited by the Act (P.L. 102-569), which can reasonably be expected to benefit an individual with a disability in terms of his employability.

(d) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring the financial need of ~~individuals~~ consumers with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

~~(e) The economic needs policy shall be reasonable and shall be applied uniformly so that equitable treatment is accorded all individuals with visual disabilities in similar circumstances.~~

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48; 34 C.F.R. 361.5; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; Eff. February 1, 1976; Amended Eff. August 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0503 ECONOMIC NEEDS SCHEDULE
~~The economic needs schedule used by the division is on file at the principal address and copies can be obtained at any of the field offices. This schedule is in accordance with S.L. 1989, c. 500, s. 43. A consumer's financial need shall be determined by application of the financial eligibility scale established by the General Assembly. Copies of the economic needs schedule can be found at any Division office.~~

History Note: Authority G.S. 111-28; S.L. 1989, c. 500, s. 43; 34 C.F.R. 361.54; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. April 1, 1990; February 1, 1986; February 1, 1982; July 1, 1979; Temporary Amendment Eff. August 1, 2001.

SECTION .0800 – HEARING PROCEDURE

10 NCAC 19G .0801 APPLICABILITY OF RULES
~~(a) The Rules in this Subchapter Section apply to administrative review, and appeals contested cases of applicants for and clients~~

TEMPORARY RULES

consumers receiving vocational rehabilitation services from the Division of Services for the Blind.

(b) "Consumer" means a person eligible for vocational rehabilitation services.

History Note: Authority G.S. 111-28; 143-546.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. December 1, 1990; June 1, 1983; February 1, 1982; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0802 WRITTEN INFORMATION FOR APPLICANTS AND CONSUMERS

(a) The Division shall inform all AH applicants for and clients consumers receiving vocational rehabilitation services shall be informed of the opportunities for an administrative ~~review and an appeal,~~ review, mediation, and impartial due process hearing available under ~~34 C.F.R. 361.48~~ 34 C.F.R. 361.57 and ~~Rules .0802 through .0827 of the Rules of~~ this Section.

(b) The Division shall provide written ~~Written~~ information ~~shall be provided~~ to all applicants and ~~clients~~ consumers informing them:

- (1) of their right to an ~~appeals~~ impartial due process hearing when they are dissatisfied with any determinations made by the Division concerning the furnishing or denial of services;
- (2) that they ~~have the option of seeking~~ may seek resolution of the issue through an administrative ~~review and mediation~~ review and mediation prior to an ~~appeals~~ impartial due process hearing;
- (3) that the rehabilitation counselor or other designated staff of the Division ~~will assist them in preparation of the written request for an administrative review or appeal and~~ will inform them of the name and address of the ~~appropriate~~ appropriate ~~regional~~ regional ~~area~~ area rehabilitation supervisor to whom the request shall be ~~submitted;~~ submitted and ~~of the manner in which a mediator or impartial hearing officer is selected; and~~
- (4) that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) At the time of initial application, The Division shall inform all applicants and consumers shall be informed in writing of the rights established in Paragraph "b" of this Rule at the time of application for vocational rehabilitation services, at the time of assignment to a category in the State's order of selection, if established, at the time of development of the Individualized Plan for Employment (IPE), and whenever vocational rehabilitation services are reduced, suspended, or terminated, verbally of the name and address of the regional rehabilitation supervisor to whom requests for administrative reviews or appeals shall be submitted. At the time an applicant or client wishes to submit a request for an administrative review or appeals hearing, the same information shall be furnished in writing to the individual.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-2;

150B-23; 34 C.F.R. 361.57; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. December 1, 1990; June 1, 1983; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0803 REQUEST FOR ADMINISTRATIVE REVIEW, MEDIATION AND IMPARTIAL DUE PROCESS HEARING

(a) When any applicant for or ~~client~~ consumer receiving vocational rehabilitation services wishes to request an administrative ~~review~~ review, ~~mediation,~~ or an ~~appeals~~ impartial due process hearing, the individual shall submit a written request to the ~~appropriate~~ appropriate ~~regional~~ regional ~~area~~ area rehabilitation supervisor of the ~~Division~~ Division ~~designated pursuant to Rule .0802 of this Section.~~

- (b) The request shall indicate if the individual is requesting:
 - (1) An administrative review review, mediation, and an appeals impartial due process hearing to be scheduled concurrently; or
 - (2) An administrative review and an impartial due process hearing to be scheduled concurrently; or
 - (3) Mediation and impartial due process hearing to be scheduled concurrently; or
 - (2)(4) only an appeals impartial due process hearing.

- (c) The request shall contain the following information:
 - (1) the name, address, and telephone number of the applicant or ~~client;~~ consumer and the individual's representative, if one has been designated, in addition to; and
 - (2) a concise statement of the determination made by the rehabilitation staff for which an administrative ~~review~~ review, mediation, or appeal impartial due process hearing is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) The Division shall not suspend, reduce, or terminate vocational rehabilitation services being provided to a client an applicant or consumer for evaluation and assessment, for development of an Individualized Plan for Employment (IPE), and as provided for under an Individualized Written Rehabilitation Program (IWRP), Individualized Plan for Employment (IPE), pending final resolution of the issue through either an ~~appeals hearing or an~~ administrative review review, mediation, or impartial due process hearing unless the individual or the ~~individual's~~ individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

(e) Participation in the mediation process is voluntary on the part of all parties.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 102-569, Section 102(d); Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0804 DIVISION ACTIONS IN

RESPONSE TO REQUEST

(a) Upon receipt of a request for an ~~appeals impartial due process~~ hearing, the ~~regional area~~ rehabilitation supervisor shall immediately forward the original request to the ~~Division's Division~~ Director for appointment of a hearing officer to conduct the ~~appeals impartial due process~~ hearing. ~~If the individual requests mediation in addition to an impartial due process hearing, the Division Director shall arrange for the appointment of an impartial mediator to conduct the mediation session.~~

(b) If the individual has requested an administrative review in addition to an ~~appeals impartial due process~~ hearing, the ~~regional area~~ rehabilitation supervisor shall:

- (1) make a decision to conduct the administrative review or with the concurrence of the Division Director appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in the controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's ~~policies and procedures rules~~ and the State Plan for Vocational Rehabilitation Services ~~(state plan); hereinafter referred to as the "State Plan"~~ and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provision of Rules .0805, .0808 and .0809 of this Section.

(c) The ~~regional area~~ rehabilitation supervisor shall send the applicant or ~~client consumer~~ written acknowledgement of receipt of the request and inform the individual that additional information will be sent regarding the administrative ~~review, mediation, or appeals impartial due process~~ hearing.

(d) The ~~regional rehabilitation area rehabilitation~~ supervisor shall provide the Client Assistance Program with a copy of the request and the response to the request.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0805 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- ~~(a)(1)~~ (1) If an administrative review is to be conducted, the ~~regional area~~ rehabilitation supervisor or his designee shall:
 - ~~(1)(A)~~ (A) set a date, time and place for the administrative review;
 - ~~(2)(B)~~ (B) send written notification by certified mail to the applicant or ~~client consumer~~ and the individual's ~~parent, parent or guardian if the individual is a minor, or his or her representative if one has been designated, with a statement guardian or representative,~~

~~as appropriate,~~ of the date, time and place for the administrative review; ~~(3)(C)~~ advise the applicant or ~~client consumer~~ in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review ~~(or mediation, if requested)~~ and that the applicant or ~~client consumer~~ will also receive a written notice from the hearing officer regarding the ~~formal appeals impartial due process~~ hearing which will be held after the administrative review; and

~~(4)(D)~~ (D) notify the Director of the Client Assistance Program (CAP) and ~~other individuals the parties~~ to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.

~~(b)(2)~~ (2) Prior to the administrative review, the ~~regional area~~ rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or ~~client consumer~~ and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director ~~as appropriate, if deemed necessary.~~

(b) Mediation

~~(1)~~ (1) ~~Upon receipt of the applicant's or the consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator as defined in 34 C.F.R. 361.5(b)(43) and who is certified by the State of North Carolina, whose name resides on the State's list of certified mediators, and who is mutually agreed upon by the Director and the individual or the individual's representative.~~

~~(2)~~ (2) ~~The mediator shall arrange a mediation session at a date, time and location that is convenient for the applicant or consumer and the individual's representative, if one has been designated, and the agency representative, and to the impartial due process hearing. The mediation process shall not be used to deny or delay a due process hearing.~~

~~(3)~~ (3) ~~The mediator shall provide the applicant or consumer and the individual's representative, the Division, and the Client Assistance Program written notice of the mediation session. The written notice shall:~~

- ~~(A)~~ (A) ~~identify the agreed date, time and place for the mediation session; and~~
- ~~(B)~~ (B) ~~advise the applicant or consumer that the hearing officer will be appointed by the Director to conduct an~~

impartial due process hearing if the matter is not resolved in mediation (or in an administrative review, if conducted) and that the applicant or consumer will receive a written notice from the hearing officer regarding the impartial due process hearing, which will be after the mediation session (and administrative review, if applicable).

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0806 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

(a) Upon receipt of the applicant's or client's consumer's request for an appeals impartial due process hearing from the regional area rehabilitation supervisor, the Director shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative, if one has been designated.

(b) Upon receipt of the applicant's or consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator who is mutually agreed upon by the Director and the individual or the individual's representative. The appointment shall come from an Agency-maintained pool of qualified mediators who are:

- (1) certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina, and
- (2) knowledgeable of federal and State law and policies governing vocational rehabilitation and independent living rehabilitation programs.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.5; 34 C.F.R. 361.57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff August 1, 2001.

10 NCAC 19G .0807 SCHEDULING AND NOTICE OF IMPARTIAL DUE PROCESS HEARING

(a) The hearing officer shall schedule the ~~formal appeals impartial due process~~ hearing to be held within ~~45~~ 60 days of the original request by the applicant or ~~client~~ consumer as described in Rule .0803 of this Section.

(b) The hearing officer shall provide the ~~applicant or client and the Division parties~~ written notice of the date, time and place of the hearing and the issue to be considered at least ten days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program.

(c) The notice shall inform the ~~applicant or client and the Division parties~~ of the following:

- (1) ~~of~~ the procedures to be followed in the hearing;
- (2) ~~of~~ the particular sections of the statutes, federal regulations, state rules, and state plan involved;
- (3) ~~of~~ the rights of the applicant or ~~client~~ consumer as specified in ~~34 C.F.R. 361.48; 34 C.F.R. 361.57;~~
- (4) that the hearing officer ~~may~~ shall extend the time for the hearing for 20 up to 30 days if the parties jointly agree to a delay and submit a written statement to ~~the~~ that effect to the hearing officer; and
- (5) that the hearing ~~may~~ shall be cancelled if the matter is resolved in an administrative ~~review.~~ review or in mediation.

(d) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0808 ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

(a)(1) Within 15 days of the original request for an administrative review by the applicant or ~~client~~ consumer, the ~~regional area~~ rehabilitation supervisor or his designee shall hold the administrative review with the applicant or ~~client~~ consumer; the individual's ~~parent, parent~~ organizer, guardian if the individual is a minor, or representative, representative if one has been designated, as appropriate; the CAP ~~Director, —Director, if participating, as appropriate;~~ and other individuals deemed necessary by the ~~regional area~~ rehabilitation supervisor or his designee.

(b)(2) Within five working days of the administrative review, the ~~regional area~~ rehabilitation supervisor or his designee shall make a decision and notify the applicant or ~~client~~ consumer and others using the following procedures:

(1)(A) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;

(2)(B) send the written report containing the decision to the applicant or ~~client~~ consumer by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Division Director and the CAP Director; and

~~(3)~~(C) provide instructions to the applicant or ~~client-consumer~~ of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or ~~client's signature~~ consumer's signature if the individual agrees with the decision.

(b) Mediation

- (1) The qualified and impartial mediator shall conduct the mediation session with the parties and their representatives. All mediation discussions are confidential and the content may not be used as evidence in subsequent impartial due process hearings or civil proceedings.
- (2) The Division shall bear the costs of the mediation.
- (3) At any point in the mediation process, either party or the mediator may elect to terminate the mediation process should this occur. Resolution through an impartial due process hearing shall continue unless cancelled by the applicant or consumer.
- (4) If an agreement is reached during the mediation session, a written mediation agreement must be developed by the parties with the assistance of the mediator. Both parties must sign it. It must include a clear statement from the consumer that he or she is satisfied with the agreement and that they request cancellation of the impartial due process hearing.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0809 RESPONSE TO ADMINISTRATIVE REVIEW DECISION AND MEDIATION

(a) Administrative Review

- ~~(a)~~(1) If the applicant or ~~client-consumer~~ is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0808~~(b)(3)~~(a)(2)(C) of this Section and submit it to the ~~regional-area~~ rehabilitation supervisor within five days of receipt of the decision. The ~~regional-area~~ rehabilitation supervisor shall inform the Director of the request to cancel the hearing immediately and forward the form to the Director who shall submit it to the hearing officer.
- ~~(b)~~(2) ~~If~~ If, after the administrative review, the hearing officer does not receive a written request from the applicant or ~~client-consumer~~ that the hearing be cancelled, the hearing shall

be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.

~~(e)~~(3) If the hearing is cancelled due to a decision resulting from the administrative review, the hearing officer shall send the applicant or ~~client-consumer~~ and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0807(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

(b) Mediation

- ~~(1)~~ If a mediation agreement is signed as described in Rule .0808 ~~(b)(4)~~ of this Section containing a statement regarding the applicant's or consumer's satisfaction with the agreement and his or her desire to cancel the impartial due process hearing, the mediator shall provide a copy of the signed mediation agreement to the applicant or consumer and to the Division representative, then forward a copy of the signed agreement to the Director.
- ~~(2)~~ The Director shall submit it to the hearing officer. The Director shall also forward a copy of the request to cancel the impartial due process hearing to the Client Assistance Program
- ~~(3)~~ If, after mediation, the hearing officer does not receive a written request from the applicant or consumer to cancel the hearing, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- ~~(4)~~ If the hearing is cancelled due to an agreement reached in mediation, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0807(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0810 ADMINISTRATIVE REVIEW BY DIRECTOR

In situations where the issue currently in controversy involves action taken by the central office of the Division, the Director or a designee of the Director shall be responsible for perform the duties prescribed for the ~~regional area~~ rehabilitation supervisor in these Rules.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 29G .0811 PROCEDURES GOVERNING HEARING

The ~~appeals-impartial due process~~ hearing shall be conducted according to the provisions of 34 C.F.R. ~~361.48(e)(2)(i) and (ii) and (d) 361.57(e)(1) and 34C.F.R. 361.57(e)(2)~~ and according to Rules .0812 through .0821 and Rule .0824 of this Section.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0812 VENUE

(a) Absent a change of venue pursuant to the procedure described in this Rule, the ~~The appeals-impartial due process~~ hearing shall be held in the county of residence in this state of the applicant or ~~client, consumer.~~

(b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.

(c) The motion shall include the following information:

- (1) The name, address, and telephone number of the movant;
- (2) identification by the case name and docket number of the proceeding for which the change is sought;
- (3) the time, date, and place for which the hearing is scheduled;
- (4) the county in which the party requests that the hearing be held;
- (5) a statement of the requested change, including the names and addresses of any witnesses whose convenience represents the basis for this request; and
- (6) any other factors that should be included in ruling on the request.

(d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and service copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.

(e) The hearing officer shall determine whether a change of venue ~~is appropriate~~ promotes the ends of justice or serves the convenience of witnesses and shall issue a order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0813 DISCOVERY

(a) Parties in ~~appeals-impartial due process~~ hearings shall exchange ~~information voluntarily,~~ information, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.

(b) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall base the resolution on the interests of justice. The hearing officer shall

issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0814 PRE-HEARING CONFERENCE

(a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.

(b) The conference shall be informal in nature.

(c) The purpose of the conference ~~will~~ shall be to discuss:

- (1) The possibility of simplification of issues;
- (2) stipulation of facts or findings;
- (3) identification of areas where evidence will be needed;
- (4) indication of discovery or subpoenas needed; and
- (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0816 EVIDENCE

(a) ~~Evidence to be admitted in the hearing shall be specified in G.S. 150B-29, G.S. 150B-30, and G.S. 150B-31.~~ G.S.150B-31 are hereby incorporated by reference, including subsequent amendments and editions.

(b) ~~This adoption by reference is made under G.S. 150B-14(c).~~ A copy can be obtained from the Division at no cost.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 150B-14(c); 150B-29; 150B-30; 150B-31; 34 C.F.R. 361.57; Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0817 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impractical ~~of~~ for the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569,

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Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 102-569;
Eff. December 1, 1990;
Amended Eff. January 1, 1996;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0818 EX PARTE COMMUNICATIONS

- (a) Ex parte communications in the ~~appeals~~ impartial due process hearing shall be governed by ~~G.S. 150B-35~~ G.S. 150B-35, which is hereby incorporated by reference, including subsequent amendments and editions.
- (b) ~~This adoption by reference is made under G.S. 150B-14(e).~~ A copy may be obtained from the Division at no cost.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 150B-35; 150B-14(c); 34 C.F.R. 361-57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0820 CONDUCT OF HEARING

- (a) The hearing officer shall have complete control over the hearing including:
- (1) the responsibility of having a record made of the hearing;
 - (2) the administration of oaths and affirmations;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations; and
 - (5) general management of the hearing.
- (b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or client consumer the rights required by ~~34 C.F.R. 361.48(e)(2)(ii)~~ 34 C.F.R. 361.57(e)(2).
- (c) The hearing shall not be open to the public.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0821 FAILURE TO APPEAR

- (a) If the applicant or client consumer fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.

(b) The applicant or client consumer may submit a written request for rescheduling of the hearing to the Director. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Director may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or ~~client~~ consumer. Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the applicant or consumer.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0822 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in ~~34 C.F.R. 361.48(e)(2)(iii)~~ 34 C.F.R. 361.57(e)(3). The decision shall be given to the applicant or client consumer personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 1430546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0823 SECRETARY'S REVIEW AND FINAL DECISION

- (a) Either party may request ~~an impartial a~~ review of the hearing officer's decision by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.
- (b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.
- (c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.
- (d) The reviewing official's review shall be based on the following standards of review:
- (1) The hearing officer's decision shall not be arbitrary, capricious, abuse of discretion, or otherwise unreasonable.
 - (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
 - (3) In reaching the decision, the hearing officer shall ~~consider~~ give appropriate and adequate interpretation to such factors as:

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- (A) the federal statute and regulations as they apply to a specific issue in question;
(B) the state plan State Plan as it applies to a specific issue in question;
(C) ~~division procedures~~ Division rules as they apply to a specific issue in question;
(D) key portions of conflicting testimony;
(E) ~~division~~ Division options in the delivery of services where such options are permissible under federal statute; and
(F) restrictions in the federal statute with regard to supportive services as maintenance and ~~transportation~~; and transportation.
(G) ~~approved federal or division rules as they relate to an issue in question.~~

(e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 calendar days from receipt of the request to review the hearing officer's decision. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(f) If the applicant or consumer does not request the Secretary's review. ~~The~~ the hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

(g) The Division Director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the CAP Director, the ~~regional-area~~ rehabilitation supervisor, and the applicant's or ~~client's~~ consumer's representative, if one is designated, as appropriate. A copy shall also be included in the individual's official case record.

History Note: Authority G.S. 143-545.1; 143-546.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 105-220; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. March 15, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0824 EXTENSIONS OF TIME

(a) ~~Reasonable time~~ Time extensions may be granted for the procedures in these Rules for good cause at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during an administrative review or mediation as specified in Rule .0803(d) of this Section;
(2) the time for conducting the ~~appeals-impartial due process~~ hearing as specified in Rule

- .0807(a) of this Section which may be extended only as specified in Rule .0807(c)(4) of this Section; and
(3) the time for issuance of the written notice of the ~~formal-appeals~~ impartial due process hearing as specified in Rule .0807(b) of this Section; Section.
(4) ~~the time for the Director's notice of review as specified in Rule .0823(c) of this Section; and~~
(5) ~~the time for the Division Director's issuance of a final decision as specified in Rule .0823(d) of this Section which may be extended only if the applicant or client requests an extension for good cause.~~

(b) When an extension of time is being granted by the person conducting the administrative ~~review~~ review, the mediator, or by the hearing officer, consideration shall be given to the effect of the extension of deadlines for other steps in the administrative ~~review~~ review, mediation, and ~~appeals-impartial due process~~ hearing procedures.

(c) Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the parties.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0825 RECORD

(a) The official records of ~~appeals-impartial due process~~ hearings shall be maintained in the central office of the Division.
(b) Any person wishing to examine a hearing record shall submit a written request to the Director in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

10 NCAC 19G .0826 TRANSCRIPTS

Any person desiring a transcript of all or part of an ~~appeals impartial due process~~ hearing shall contact the office of the Director. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

History Note: Authority G.S. 143-546.1; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001.

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 26H .0212

Effective Date: June 13, 2001

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 108A-25(b); 108A-54; 108A-55(c); 42 C.F.R. 447, Subpart C; 42 C.F.R. 447.321*

Reason for Proposed Action: *This change is necessary to ensure the continuing availability of an adequate level of services to Medicaid and uninsured persons.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, 2504 Mail Service Center, Raleigh, NC 27699-2504.*

CHAPTER 26 – MEDICAL ASSISTANCE

SUBCHAPTER 26H – REIMBURSEMENT PLANS

SECTION .0200 – HOSPITAL INPATIENT REIMBURSEMENT PLAN

10 NCAC 26H .0212 EXCEPTIONS TO DRG REIMBURSEMENT

(a) Covered psychiatric and rehabilitation inpatient services provided in either specialty hospitals, Medicare recognized distinct part units (DPU), or other beds in general acute care hospitals shall be reimbursed on a per diem methodology.

- (1) For the purposes of this Section, psychiatric inpatient services are defined as admissions where the primary reason for admission would result in the assignment of DRGs in the range 424 through 432 and 436 through 437. For the purposes of this Section, rehabilitation inpatient services are defined as admissions where the primary reason for admissions would result in the assignment of DRG 462. All services provided by specialty rehabilitation hospitals are presumed to come under this definition.
- (2) When a patient has a medically appropriate transfer from a medical or surgical bed to a psychiatric or rehabilitative distinct part unit within the same hospital, or to a specialty hospital the admission to the distinct part unit or the specialty hospital shall be recognized as a separate service which is eligible for reimbursement under the per diem methodology.

Transfers occurring within general hospitals from acute care services to non-DPU psychiatric or rehabilitation services are not eligible for reimbursement under this Section. The entire hospital stay in these instances shall be reimbursed under the DRG methodology.

- (3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing

psychiatric services as derived from the most recent as filed cost reports.

- (4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.
- (5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recent filed cost reports.
- (6) Rates established under this Paragraph are adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(5) of this Section.

(b) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Health and Human Services and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools shall be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual. This Manual referred to as, (HCFA Publication #15-1) is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from the U.S. Department of Commerce, National Technical Information Service, Subscription Department, 5285 Port Royal Road, Springfield, VA 22161 at a cost of one hundred forty seven dollars (\$147.00). Purchasing instructions may be received by calling (703) 487-4650. Updates are available for an additional fee. The Division shall utilize the DRG methodology to make interim payments to providers covered under this Paragraph, setting the hospital unit value at a level which can best be expected to approximate reasonable cost. Interim payments made under the DRG methodology to these providers shall be retrospectively settled to reasonable cost.

(c) When the Norplant contraceptive is inserted during an inpatient stay the current Medicaid fee schedule amount for the Norplant kit shall be paid in addition to DRG reimbursement. The additional payment for Norplant shall not be paid when a cost outlier or day outlier increment is applied to the base DRG payment.

(d) Hospitals operating Medicare approved graduate medical education programs shall receive a per diem rate adjustment which reflects the reasonable direct and indirect costs of operating these programs. The per diem rate adjustment shall be calculated in accordance with the provisions of Rule .0211 Paragraph (f) of this Section.

~~(e) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the 12 month period ending September 30, 2000 shall be entitled to an additional payment for inpatient and outpatient hospital services in an amount determined by the Director of the Division of Medical Assistance, subject to the following provisions:~~

- ~~(1) To ensure that the payments authorized by this Subparagraph for qualified public hospitals that qualify under the criteria in Part (A) of this Subparagraph, do not exceed the upper limits established by 42 C.F.R. 447.272 and 42~~

~~C.F.R. 447.321, the maximum payments authorized for qualified public hospitals shall be determined for all such qualified public hospitals for the 12 month period ending September 30, 1999 by calculating the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services; plus the reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs; less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:~~

~~(A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph; and:~~

~~(i) was owned or operated by a State (or by an instrumentality or a unit of government within a State) from September 18 through and including September 30, 2000;~~

~~(ii) verified its status as a public hospital by certifying State, local, hospital district or authority government control on the most recent version of Form HCFA 1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 18, 2000; and~~

~~(iii) files with the Division on or before September 18, 2000 by use of a form prescribed by the Division a certificate of public expenditures to support a portion of the non-federal share of the payment it shall receive pursuant to this Subparagraph. This provision shall not apply to qualified public hospitals that are also designated by North Carolina as Critical Access Hospitals pursuant to 42 USC 1395i 4.~~

~~(B) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.~~

~~(C) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid~~

~~disproportionate share hospital payments received or to be received.~~

~~(2) Qualified public hospitals shall receive a payment under this Paragraph in an amount (including the public expenditures certified to the Division by each hospital for the non-federal share) not to exceed each hospital's Medicaid Deficit.~~

~~(3) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the 12-months ending September 30, 2000 that are not qualified public hospitals as defined in this Paragraph shall be entitled to an additional payment under this Subparagraph for the Medicaid Deficit calculated in accordance with Subparagraph (1) of this Paragraph in an amount not to exceed the Medicaid Deficit.~~

~~(4) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services during the payment fiscal year 2000. Subject to availability of funds the Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on cost reports for fiscal year ending in 1999 filed before September 18, 2000 and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.~~

~~(5) To ensure that estimated payments pursuant to Subparagraph (4) of this Paragraph do not exceed the state aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within twelve months of receipt of the completed cost reports covering the 12-month period ending September 30, 2000 or December 31, 2001, whichever date is earliest. There shall be separate a cost settlement procedure for inpatient and outpatient hospital services. In addition for both inpatient and outpatient hospital services, there shall be a separate aggregate cost settlement pool for qualified public hospitals that are owned or operated by the State, for qualified public hospitals that are owned or operated by an instrumentality or unit of government within a State and for hospitals qualified for payment under this Paragraph that are not qualified public hospitals. As to each of these separate cost settlement procedures, if it should be determined that aggregate payments under this~~

~~Paragraph exceed aggregate upper limits for such payments, any hospital that received payments under this Paragraph in excess of unreimbursed reasonable costs as defined in this Paragraph shall promptly refund its proportionate share of aggregate payments in excess of aggregate upper limits. The proportionate share of each such hospital shall be ascertained by calculating for each such hospital its percentage share of all payments to all members of the cost settlement group that are in excess of unreimbursed reasonable costs, and multiplying that percentage times the amount by which aggregate payments being cost settled exceed aggregate upper limits applicable to such payments. No additional payments shall be made in connection with these cost settlements.~~

~~(6) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).~~

(e) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter shall be entitled to a lump sum payment for the period from September 18, 2000 through September 30, 2000, and lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually and no more frequently than quarterly for inpatient and outpatient hospital services in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

(1) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12-month period ending September 30th of the year for which payments are made the applicable percentage of:

(A) The reasonable cost of inpatient and outpatient hospital Medicaid services; and

(B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.

(2) For purposes of this Paragraph the phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.

(3) Qualified public hospitals shall receive payments under this Paragraph in amounts (including the expenditures described in Part A (iii) of this Subparagraph not to exceed the applicable percentage of each hospital's Medicaid costs for the 12-month period ending September 30th of the fiscal year for which such payments are made, less any Medicaid payments received or to be received for these services.

(A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph; and

(i) was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments are made; and

(ii) verified its status as a public hospital by certifying State, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U. S. Department of Health and Human Services at least 30 days prior to the date of any such payment that remains valid as of the date of any such payment; and

(iii) files with the Division on or before 10 working days prior to the date of any such payment by use of a form prescribed by the Division certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b). This provision shall not apply to qualified public hospitals that are also designated by North Carolina as Critical Access Hospitals pursuant to 42 USC 1395i-4.

(4) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter that are not qualified public hospitals as defined in this Paragraph shall be entitled to lump sum payments in amounts that do not exceed the applicable percentage of

each hospital's Medicaid costs (calculated in accordance with Subparagraph (1) of this Paragraph) for the 12- month period ending September 30th of the fiscal year for which such payments are made less any Medicaid payments received or to be received for these services.

(5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which payments are made. There shall be a separate cost settlement procedure for inpatient and outpatient hospital services. In addition for both inpatient and outpatient hospital services, there shall be a separate aggregate cost settlement pool for qualified public hospitals that are owned or operated by the State, for qualified public hospitals that are owned or operated by an instrumentality or unit of government within a State and for hospitals qualified for payment under this Paragraph that are not qualified public hospitals. As to each of these separate cost settlement procedures, if it is determined that aggregate payments under this Paragraph exceed aggregate upper limits for such payments, any hospital that received payments under this Paragraph in excess of unreimbursed reasonable costs as defined in this Paragraph shall promptly refund its proportionate share of aggregate payments in excess of aggregate upper limits. The proportionate share of each such hospital shall be ascertained by calculating for each such hospital its percentage share of all payments to all members of the cost settlement group that are in excess of unreimbursed reasonable costs, and multiplying that percentage times the

amount by which aggregate payments being cost settled exceed aggregate upper limits applicable to such payments. No additional payment shall be made in connection with the cost settlement.

(7) The payments authorized under this Paragraph shall be effective in accordance with G.S. 108A-55(c)

~~(f) Subject to the availability of funds, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for any fiscal year ending September 30, commencing with September 30, 2000 that are not qualified public hospitals as defined in Subparagraph (e)(1)(A) of this Paragraph; that operate Medicare approved graduate medical education programs and reported Medicaid costs attributable to such programs to the Division on cost reports for fiscal years ending in 1995 through 1999; and that incur for the 12-month period ending September 30, 1999 unreimbursed costs for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000) shall be eligible for a lump sum payment subject to the following provisions:~~

~~(1) Qualification for any 12-month period ending September 30 shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 1 of each year, for the fiscal year ending in the preceding calendar year.~~

~~(2) To ensure that the payments authorized by this Paragraph for any fiscal year do not exceed the upper limits established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321:~~

~~(A) Subject to the limitations in Subparagraph (5) of this Paragraph, the lump sum payment shall be the reasonable cost of inpatient and outpatient hospital Medicaid services; plus~~

~~(B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs, less Medicaid payments received or to be received for these services.~~

~~(3) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.~~

~~(4) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received, but shall include all Medicaid payments received other than disproportionate share hospital payments, calculated after any payments made pursuant to Paragraph (e) of this Rule.~~

~~(5) Under no circumstances shall the payment authorized by this Paragraph exceed a percentage of the Hospital's unreimbursed cost~~

~~for providing services to uninsured patients determined by the Division under Paragraph (e) of Rule .0213.~~

~~(6) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for Medicaid inpatient and outpatient services during the fiscal year to which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid inpatient and outpatient services as reported on cost reports for fiscal years ending during the calendar year preceding the year to which the payment relates filed before September 1 of the year to which the payment relates, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.~~

~~(7) To ensure that estimated payments pursuant to Subparagraph (6) of this Paragraph do not exceed the state aggregate upper limit to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 447.321), such payments shall be cost settled within 12 months of receipt of the completed cost report for the year for which such payments were made. The cost settlement shall be as described in Subparagraph (e)(5) of this Rule.~~

~~(8) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(e).~~

(f) Subject to availability of funds, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30th and thereafter, that are not qualified public hospitals as defined in Part (e)(3)(A) of this Rule; that operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs; and that incur unreimbursed costs for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000.00) shall be eligible for a lump sum payment for the period from September 18, 2000 through September 30, 2000, and lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually and no more frequently than quarterly in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

(1) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the

Division by hospitals at least 60 days prior to the date of any payment under this Paragraph.

(2) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12-month period ending September 30th of the year for which payments are made the applicable percentage of:

(A) The reasonable cost of inpatient and outpatient hospital Medicaid Services; and

(B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.

(3) For purposes of this Paragraph the phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received, but shall include all Medicaid payments received other than disproportionate share hospital payments, calculated after any payments made pursuant to Paragraph (e) of this Rule.

(4) Under no circumstances shall the payment authorized by this Paragraph exceed a percentage of the hospital's unreimbursed cost for providing services to uninsured patients determined by the Division under Paragraph (e) of Rule .0213 of this Section.

(5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for Medicaid services during the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid inpatient and outpatient services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the

extent that the Director concludes that the additional financial information is reliable and relevant.

(6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limit to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which such payments were made. The cost settlement shall be as described in Subparagraph (e)(6) of this Rule.

(7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55(c); 42 C.F.R. 447, Subpart C; 42 C.F.R. 447.321; Eff. February 1, 1995;
 Filed as a Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Amended Eff. January 1, 1996;
 Temporary Amendment Eff. September 30, 1997; September 25, 1996;
 Temporary Amendment Expired July 31, 1998;
 Temporary Amendment Eff. September 16, 1998;
 Temporary Amendment Expired on June 13, 1999;
 Temporary Amendment Eff. September 22, 1999;
 Temporary Amendment Expired on July 11, 2000;
 Temporary Amendment Eff. June 13, 2001; September 18, 2000.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

Rule-making Agency: NC Department of the Secretary of State

Rule Citation: 18 NCAC 05 .0101-.0102; .0201-.0209; .0301-.0303; .0305-.0306; .0401-.0403; 05A .0101-.0108; .0201-.0207; .0301-.0312; .0401-.0410; .0501-.0505; .0601-.0603

Effective Date: July 2, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: GS. 143A-23; 25-9-526; 44-68.14

Reason for Proposed Action: The 2000 General Assembly, in Senate Bill 1305, rewrote Article 9 (Secured Transactions) of the Uniform Commercial Code after studying model legislation from the National Conference of Commissioners on Uniform State Laws. The new law, at G.S. 25-9-526 (directs the Department to adopt rules in consultation with Model Rules, revised effective October 2000, promulgated by the International Association of Corporate Administrators. The Department is filing these temporary rules to coincide with the Senate Bill 1305 effective date of July 1, 2001.

Comment Procedures: To comment on these temporary rules or to receive a copy of the supporting documents, contact Scott Templeton, Deputy Secretary, NC Department of the Secretary of State, PO Box 29622, Raleigh, NC 27626-0622, or by email at stempleton@sosnc.com.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 05A .0101-.0108, .0201-.0207, .0301-.0312, .0401-.0410, .0501-.0505, .0601-.0603 and repeal the rules cited as 18 NCAC 05 .0101-.0102, .0201-.0209, .0301-.0303, .0305-.0306, .0401-.0403. Notice of Rule-making Proceedings was published in the Register on March 1, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To request a public hearing on these temporary rules, contact in writing Scott Templeton, Deputy Secretary, NC Department of the Secretary of State, PO Box 29622, Raleigh, NC 27626-0622, or by email at stempleton@sosnc.com.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 05 – UNIFORM COMMERCIAL CODE DIVISION

SECTION .0100 – GENERAL PROVISIONS

18 NCAC 05 .0101 LOCATION AND HOURS

~~Filing of Uniform Commercial Code documents may be made from 7:30 a.m. until 3:30 p.m.~~

History Note: Authority G.S. 25-9-401; Eff. February 1, 1976;
 Amended Eff. March 1, 1996; September 1, 1988;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0102 ADMINISTRATION AND FUNCTION

~~The Uniform Commercial Code Division is a division of the Department of the Secretary of State. The Secretary of State is the central filing officer for the Uniform Commercial Code. The head of the division is the Deputy Uniform Commercial Code Filing Officer. He is responsible for the operation of the division on a day to day basis. Questions regarding filing procedure and problems encountered with the UCC Division should be directed to the deputy filing officer. The Uniform Commercial Code Division of the Department of the Secretary of State is the central filing office under Article 9 of the Uniform Commercial Code. Financing statements and other documents which effect financing statements are filed in the division. The division is responsible for indexing these documents and retaining them for public inspection. Upon~~

~~written request the division must furnish information from the files to any interested party.~~

~~Notices of Federal Tax Liens filed against partnerships and corporations whose principal executive office is in this state are filed by this division. Upon request this division must furnish information regarding a particular taxpayer to any interested party.~~

History Note: Authority G.S. 25-9-401; 44-68.1;
 Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2002.

SECTION .0200 – FILING PROCEDURE

18 NCAC 05 .0201 PLACE OF FILING

~~It is the responsibility of the filing party to determine if filing is necessary in this division. No legal assistance will be given to any individual to determine if filing is necessary.~~

History Note: Authority G.S. 25-9-403;
 Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0202 CONTENTS OF DOCUMENTS SUBMITTED FOR FILING

~~The division is not responsible for the sufficiency of the contents of any document submitted for filing. It is the responsibility of the filing party to see that the document meets all of the statutory requirements for a sufficient financing statement. If the names and addresses of the debtor and secured party for an original financing statement can be determined for indexing purposes, and the document is accompanied by the statutory fee, it will be accepted and indexed. The fact that a document has been accepted for filing does not indicate that the document is sufficient as a financing statement.~~

History Note: Authority G.S. 25-9-403;
 Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0203 FORMS

~~(a) Standard Forms. The following forms have been approved by the Secretary of State for use as standard forms:~~

- ~~.(1) Form UCC-1 Uniform Commercial Code Financing Statement,~~
- ~~.(2) Form UCC-2 Uniform Commercial Code Financing Statement (for extra copies),~~
- ~~.(3) Form UCC-3 Uniform Commercial Code Financing Statement Change,~~
- ~~.(4) Form UCC-4 Uniform Commercial Code Financing Statement Change (for extra copies),~~
- ~~.(5) Form UCC-5 Uniform Commercial Code Additional Sheets,~~
- ~~.(6) Form UCC-11 Uniform Commercial Code Request for Information.~~

~~Forms UCC-1, 3 and 5 are five part snap-out forms. The snap-out size of the forms is five inches deep by eight inches wide. Forms UCC-2 and 4 are identical to the UCC-1 and 3 in size but contain only four parts. Form UCC-11 is a three part~~

~~snap-out form. The snap-out size of the form is five inches deep by eight inches wide.~~

~~(b) Procurement of Forms. The Department of the Secretary of State does not furnish or sell UCC forms. UCC forms may be purchased from commercial printers. Anyone wishing to print UCC forms may obtain specifications and samples from the Department of the Secretary of State, UCC Division, 300 North Salisbury Street, Raleigh, NC 27603-5909.~~

History Note: Authority G.S. 25-9-402(9); 25-9-403(5);
 25-9-405; 25-9-406;
 Eff. February 1, 1976;
 Amended Eff. March 1, 1996; September 1, 1988; July 1, 1979;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0204 FEES

~~Documents which are submitted with no money or with an insufficient amount shall be returned with a note stating the exact amount of the fee. Fees may be paid by check, money order or cash. Checks and money orders should be made payable to the Secretary of State North Carolina. A list of fees required by G.S. 25-9-403, 25-9-404, 25-9-405, 25-9-406 and 25-6-407 and G.S. 147-37 is available upon request.~~

History Note: Authority G.S. 25-9-403; 25-9-403; 25-9-404;
 25-9-405; 25-9-406; 25-6-407 and G.S. 147-37
 Eff. February 1, 1976;
 Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 1, 2001.

18 NCAC 05 .0205 CONTINUATIONS

~~Continuation statements shall be accepted at any time during the period beginning six months prior to the expiration of the original document to which the continuation statement refers and ending on the date of the expiration of that document. If an original document expires on a Saturday, Sunday or on a legal holiday on which the office was closed, a continuation may be filed on the next day that the office is open for business. Continuations received which refer to expired documents shall not be filed.~~

History Note: Authority G.S. 25-9-403;
 Eff. February 1, 1976;
 Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0206 TERMINATION

~~(a) Page number 3 of the approved UCC-1 and UCC-2 has been designed for use as a termination statement. Whenever a given financing statement is to be terminated the secured party of record shall date and sign this page in the space provided for termination. The secured party's signature must appear in this space in order to terminate the original document. If the signature appears elsewhere on this form it shall not be accepted as a termination.~~
~~(b) Form UCC-3 or UCC-4 may be used as a termination statement. Sections 1, 2, 5, and 7 must be completed. This form shall be signed by the secured party of record.~~

History Note: Authority G.S. 25-9-404;
 Eff. February 1, 1976;

Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0207 FILING BY MAIL

~~UCC documents may be mailed to the division. The mailing address is the Department of the Secretary of State, UCC Division, 300 North Salisbury Street, Raleigh, NC 27603-5909. The document must be accompanied by the exact statutory fee. When using the standard form send only the first three pages of the form. Pages 1 and 2 will be retained by our office. Page number 3 will be returned as an acknowledgment of filing. If the form arrives with more than three pages attached the remaining pages will be discarded. Acknowledgment of filing is normally mailed in a window envelope using the name and address of the secured party on the UCC form. If the acknowledgment copy is to be mailed to an address other than that of the secured party a self-addressed envelope shall accompany the document.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Amended Eff. March 1, 1996; September 1, 1988;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0208 OVER THE COUNTER FILINGS

~~Uniform Commercial Code documents may be file stamped between 7:30 a.m. and 3:30 p.m. Those documents received after 3:30 p.m. on any given day will be filed by the filing officer and file stamped with the following day's date in order of receipt.~~

History Note: Authority G.S. 25-9-403;
Eff. February 1, 1976;
Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0209 REFUNDS

~~Refunds shall be made on overpayment of filing fees in connection with original Uniform Commercial Code Financing Statements.~~

History Note: Authority G.S. 25-9-403;
Eff. February 1, 1976;
Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 1, 2001.

SECTION .0300 – INFORMATION FROM THE FILING OFFICER

18 NCAC 05 .0301 REQUEST FOR INFORMATION BY MAIL

~~Form UCC-11 must be used to obtain information from the Filing Officer regarding a particular debtor. The form should be mailed to the division intact.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0302 PREPARATION OF THE UCC-11 FORM

~~A separate form should be prepared for each debtor. The name and mailing address of the requesting party should be shown in block No. 2. All statements will be shown regarding a particular debtor at the address shown in block No. 1 of the UCC-11 form. If a debtor has more than one address the requesting party must indicate that the search is to cover all locations. This must be clearly indicated in section number one. Either the information or copy request section of the UCC-11 form must be marked. If the form is received with both sections marked, only copies will be sent. If both an information and copy request are desired, two separate UCC-11 forms must be submitted. A separate charge will be made for each form.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0303 CONTENTS OF CERTIFIED UCC-11 FORM

~~The information request will contain the file number, date and hour of filing and the names and addresses of the secured parties. Under no circumstances will searches be made for specific collateral. The copy request will have the file number of each financing statement listed in the copy request section. Copies of these statements will be attached to the copy request.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0305 FEES FOR INFORMATION FROM THE FILING OFFICER

~~Requests for information shall be rejected if received with no money. The request shall be returned with a note stating the amount due. Deposit accounts are not available in order to pay for fees in connection with information requests. A schedule of fees for information and copy request is available from the division.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Amended Eff. March 1, 1996;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0306 TELEPHONE SEARCHES

~~Telephone requests for information or copies will not be accepted at any time. This includes oral reports and requests for written certificates.~~

History Note: Authority G.S. 25-9-407;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

SECTION .0400 – FEDERAL TAX LIENS

18 NCAC 05 .0401 FILING OF FEDERAL TAX LIENS

~~The Uniform Commercial Code Division of the Department of the Secretary of State files Federal Tax Liens on corporations and partnerships whose executive office is located in North Carolina. These liens are indexed by the tax payers' name and~~

are available for public inspection. These liens are filed by the Internal Revenue Service.

History Note: Authority G.S. 44-68.4;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0402 INFORMATION FROM THE FILING OFFICER REGARDING TAX LIENS

~~Upon written request the Filing Officer will issue his certificate indicating whether there are tax liens on file showing a particular partnership or corporation. If a tax lien is on file the Filing Officer will furnish a copy of the lien upon written request. Form UCC-11 may not be used for requesting information on Federal Tax Liens.~~

History Note: Authority G.S. 44-68.3;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

18 NCAC 05 .0403 FEES FOR INFORMATION REGARDING TAX LIENS

~~The fee schedule for information on tax liens is available upon request.~~

History Note: Authority G.S. 44-68.3;
Eff. February 1, 1976;
Temporary Repeal Eff. July 2, 2001.

SUBCHAPTER 05A – UNIFORM COMMERCIAL CODE SECTION

SECTION .0100 – GENERAL PROVISIONS

18 NCAC 05A .0101 SCOPE

~~The Uniform Commercial Code Section of the Department of the Secretary of State is the central filing office under Article 9 of the Uniform Commercial Code. As provided in 9-526 of the Uniform Commercial Code and G.S. 25-9-519, the filing office's duties and responsibilities shall be expressed in a written set of administrative rules, which the public shall have a voice in creating as provided for in G.S. 150B – The Administrative Procedures Act.~~

History Note: Authority G.S. 25-9-526; 143A-23;
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0102 DEFINITIONS

~~In addition to the definitions contained in G.S. 25-9-102, the following terms shall have the respective meanings and shall apply to the rules in this Subchapter:~~

- ~~(1) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.~~
- ~~(2) "Assignment" is an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.~~
- ~~(3) "Business to Government (B2G)" relationship means business to government electronic communication and interaction which~~

~~facilitates the transfer of XML files and documents between business and government, including, but not limited to, electronic filing and on-line searches.~~

- ~~(4) "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.~~
- ~~(5) "E-filing account" means the account number a remitter shall be assigned upon subscribing to this method of payment~~
- ~~(6) "Filing office" and "filing officer" mean the Uniform Commercial Code (UCC) Section of the North Carolina Department of the Secretary of State.~~
- ~~(7) "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.~~
- ~~(8) "FTP site" means the Department's repository that stores UCC filing record data and makes the raw data accessible to subscribers over the internet via file transfer protocol.~~
- ~~(9) "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.~~
- ~~(10) "Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.~~
- ~~(11) "Organization" means a legal person who is not an individual.~~
- ~~(12) "Processing fee" means the fee remitted to the filing office for filing and indexing a UCC record.~~
- ~~(13) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.~~
- ~~(14) "UCC" means the Uniform Commercial Code as adopted in North Carolina.~~
- ~~(15) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination, a filing officer statement, or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.~~

History Note: Authority G.S. 25-9-102; 25-9-526;
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0103 PLACE OF FILING, TIME OF FILING, AND METHODS OF DELIVERY

~~(a) It is the responsibility of the filing party to determine if filing is necessary in the UCC Section. Legal assistance will not be given to any individual to determine if filing is necessary.~~

(b) The UCC Section is the office for filing UCC records relating to all types of collateral except for timber to be cut, as-extracted collateral and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. Regardless of the nature of the collateral, the UCC Section is the office for filing all UCC records where the debtor is a transmitting utility.

(c) UCC records may be tendered for filing at the filing office as follows:

- (1) Personal delivery at the filing office's street address: Old Revenue Building, 2 S. Salisbury Street, P. O. Box 29622, Raleigh, NC 27626-0622. Regular business hours: 8:00 a.m. – 5:00 p.m., Monday through Friday. The file time for a UCC record delivered by this method is when delivery of the UCC record is accepted by the filing office even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.
- (2) Courier delivery at the filing office's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of the delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.
- (3) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is the next close of business following the time of delivery even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close if business on the next day the filing office is open for business.
- (4) Electronic filing: UCC filings, excluding correction statements and filing officer statements, may be transmitted through web site submission, using the current XML standard approved by the International Association of Corporate Administrators. Documentation for the current standard can be obtained at www.sosnc.com/ucc. The file time for a UCC record delivered by this method is the time that the filing office's E-filing system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable. An E-filing account number shall be assigned to the remitter prior to electronic filings.

(d) UCC search requests shall be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. Requirements concerning search requests are set forth in Section .0500 of this Subchapter. An Information Request Form shall be used to request a search.

(e) In addition to contacting the Section at the address provided in Subparagraph (c)(1) of this Rule, information may be obtained from the filing office in the following ways:

- (1) On-line information service: The filing officer offers on-line information services at www.sosnc.com/ucc.
- (2) Electronic Mail: For basic information the UCC Section may be contacted by email at uccinfo@sosnc.com. Electronic mail shall not be used for filing UCC records or for requesting searches of the records of financing statements.
- (3) Telephone Number: The telephone number of the Section is 919-807-2111.
- (4) Fax Number: The fax number of the Section is 919-807-2120.

History Note: Authority G.S. 25-9-501; 25-9-523; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0104 CONTENTS OF RECORDS SUBMITTED FOR FILING

The filing office is not responsible for the sufficiency of the contents of any record submitted for filing. It is the responsibility of the filing party to see that the record meets all of the statutory requirements for a sufficient financing statement. The fact that a record has been accepted for filing does not indicate that the record is sufficient as a financing statement.

History Note: Authority G.S. 25-9-516; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0105 APPROVED FORMS

(a) The filing forms referenced in G.S. 25-9-521(a) & (b), as developed by the International Association of Corporate Administrators ("IACA"), are hereby incorporated by reference.
(b) Procurement of Forms. The Department of the Secretary of State does not furnish or sell UCC forms. UCC forms shall be purchased from commercial printers. Anyone wishing to print UCC forms may obtain specifications and samples from the Department of the Secretary of State, UCC Section, at the address provided in Rule .0102(c) of this Section. Forms may also be downloaded and printed from the Department's web page at www.sosnc.com/ucc.

History Note: Authority G.S. 25-9-521; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0106 PROCESSING FEES AND METHODS OF PAYMENT

(a) A list of processing fees required by G.S. 25-9-525 and G.S. 147-37 is available upon request.
(b) Processing fees for public records services may be paid by the following methods:

- (1) Cash. Payment in cash shall be accepted if paid in person at the filing office.

- (2) Checks. Personal checks, cashier's checks and money orders made payable to the filing office (N. C. Department of the Secretary of State) shall be accepted for payment if they are drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office
- (3) Electronic funds transfer. E-filing accounts shall be established through an agreement between the filing office and the remitter. Payments shall be made through an automated contract. The filing officer shall deduct processing fees from the remitter's prepaid account when authorized to do so when the remitter files a UCC record with the remitter's E-filing account number.
- (4) Prepaid account. A remitter shall open an E-filing account for prepayment of fees by submitting an application prescribed by the filing officer and prepaying an amount not less than five hundred dollars (\$500.00), the balance of which shall not fall below thirty dollars (\$30.00). The filing officer shall issue an E-filing account number to be used by a remitter who chooses to pay processing fees by this method. The filing officer shall deduct processing fees from the remitter's prepaid account when authorized to do so when the remitter files a UCC record with the remitter's E-filing account number.

(c) The filing office's policies on overpayment and underpayment of processing fees are as follows:

- (1) The filing office shall refund the amount of an overpayment to the remitter pursuant to the Department's budget policy contained in Item "g" of the "Cash Management Plan on Refunds".
- (2) Upon receipt of a record without a processing fee, the filing officer shall reject the record.
- (3) In the case of bulk filings which have 50 or more records, and the remitter presents records to be filed with a deficient processing fee, a notice of the deficiency shall be sent to the remitter and the records shall be held for a period of 10 business days from the date of the notice for receipt of the fee. Upon receipt of the fee, the documents shall be filed as of the time and date of receipt of the full processing fee. If the fee is not received within 10 business days of the date of the notice, the document shall be returned to the remitter with a written explanation for the refusal to accept the document(s). Processing fees are not refundable.
- (4) If the remitter presents a UCC record that contains a filing and a search request on the same form with an insufficient fee, the filing officer shall accept the record presented for filing if the fee is enough to cover the filing and reject the search request if the balance of the fee is insufficient to cover the search.

History Note: Authority G.S. 25-9-525; 147-37; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0107 PUBLIC RECORDS SERVICES

(a) Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in this Section. The following methods are available for obtaining copies of UCC records and copies of data from the UCC information management system:

- (1) Copies of individually identified records are available in the following forms:
 - (A) "B2G" Relationship by subscription;
 - (B) Paper;
 - (C) Microfilm; and
 - (C) Web-based access.
- (2) Bulk copies of records of UCC records are available in the following forms:
 - (A) Microfilm;
 - (B) FTP site by subscription; and
 - (C) Web-based access.

(b) A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows:

- (1) Full Extracts. Bulk data extracts of information from the UCC information management system are available on a weekly basis.
- (2) Format. Extracts from the UCC information management system are available in the following formats:
 - (A) FTP site by subscription. ASCII Text delimited with tabs between data elements and carriage returns at end of each record. One table per file. The current data layouts will be on the FTP site; or
 - (B) "B2B Relationship" by subscription; or
 - (C) Web-based access.
- (3) Images of records are available by subscription by contacting the filing officer.

History Note: Authority G.S. 25-9-523(d); 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0108 FEES FOR PUBLIC RECORDS SERVICES

Fees for public records services are established as follows:

- (1) Paper copies of individual records are two dollars (\$2.00) per page.
- (2) "B2G" subscription service. Cost is available from the filing office.
- (3) Bulk Copies of records.
 - (a) Microfilm – fifty dollars (\$50.00) per reel.
 - (b) Direct on-line access (FTP Site) makes UCC data available on a subscription basis. A description of

- this subscription service and cost is available from the filing officer.
 (c) Web-based access is free.

History Note: Authority G.S. 25-9-523; 25-9-526;
Temporary Adoption Eff. July 2, 2001.

SECTION .0200 – ACCEPTANCE AND REFUSAL OF RECORDS

18 NCAC 05A.0201 ROLE OF FILING OFFICER

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to the rules in this Subchapter, the filing officer does none of the following:

- (1) Determine the legal sufficiency or insufficiency of a record;
- (2) Determine that a security interest in collateral exists or does not exist;
- (3) Determine that information in the record is correct or incorrect, in whole or in part; or
- (4) Create a presumption that information in the record is correct or incorrect, in whole or in part.

History Note: Authority G.S. 25-9-516;
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0202 GROUNDS FOR REFUSAL OF UCC DOCUMENT

(a) As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

(b) Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

(c) Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual (personal name) or an organization (commercial name), if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number, or the SOS ID number in North Carolina, or a statement that it does not have one.

(d) Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an

assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

(e) Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

(f) Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by G.S. 25-9-512(1), 25-9-514(b), or 25-9-518(b)(1), is an initial financing statement.

(g) Timeliness of continuation. A continuation shall be refused if it is not received during the six-month period concluding on the day upon which the related financing statement would lapse.

- (1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.
- (2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

History Note: Authority G.S. 25-9-516; 25-9-520(a);
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A.0203 PROCEDURE UPON REFUSAL

If the filing officer finds grounds to refuse acceptance of a UCC record, the filing officer shall comply with G.S. 25-9-520. All filing and indexing fees are nonrefundable because of the substantial processing work required for both accepted and rejected records.

History Note: Authority G.S. 25-9-520;
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0204 NOTIFICATION OF DEFECTS

Nothing in these Rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

History Note: Authority G.S. 25-9-520; 25-9-526(b);
Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0205 REFUSAL ERRORS

If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been, the filing officer will file the UCC record as provided in these Rules with a filing date and time assigned when such filing occurs. The filing officer shall also file a filing officer statement that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing.

*History Note: Authority G.S. 25-9-516; 25-9-518; 25-9-526(b);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0206 FILING OFFICER ERRORS

The filing office may correct the errors of the filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification date, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

History Note: Authority G.S. 25-9-516; 25-9-517; 25-9-518; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0207 NOTICE OF BANKRUPTCY

The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

History Note: Authority G.S. 25-9-522; Temporary Adoption Eff. July 2, 2001.

SECTION .0300 – UCC INFORMATION MANAGEMENT SYSTEM

18 NCAC 05A .0301 POLICY STATEMENT

The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements that have not lapsed. The rules in this Section describe the UCC information management system.

History Note: Authority G.S. 25-9-526(b)(3); Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0302 PRIMARY DATA ELEMENTS

The primary data elements used in the UCC information management system are the following:

- (1) Identification numbers.
 - (a) Each initial financing statement is identified by its file number as described in G.S. 25-9-519(b). Identification of the initial financing

statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

(b) A UCC record other than an initial financing statement is identified by a unique filing number assigned by the filing officer. In the information management system, records of all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

- (2) Type of record. The type of UCC record from which data is transferred is identified in the information management system from information supplied by the remitter.
- (3) Filing date and filing time. The filing date and filing time of UCC records are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.
- (4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system using one or more data entry or transmittal techniques.
- (5) Status of financing statement. In the information management system, each financing statement has a status of active or inactive.
- (6) Page count. The total number of pages in a UCC record is maintained in the information management system.
- (7) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in Rule .0405(c) of this Subchapter.

History Note: Authority G.S. 25-9-519(b); 25-9-526(b)(3); Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0303 INITIAL FINANCING STATEMENT

Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows:

- (1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the

UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

- (2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.
- (3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured – home transaction, in which case the lapse date shall be 30 years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

*History Note: Authority G. S. 25-9-511(a); 25-9-514; 25-9-515; 25-9-519(g);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0304 AMENDMENT

The filing office shall act on any UCC record filed with the filing office by adding information obtained from the UCC record to the information system. The filing office shall not act on any UCC record by deleting any information from the information system. An amendment shall have no effect upon the status of the financing statement or parties, except that a continuation may extend the period of effectiveness of a financing statement. The filing office may remove the UCC record and delete the names under which it was indexed one year after lapse. A financing statement filed against a transmitting utility shall lapse when terminated by the last secured party of record.

Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows:

- (1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:
 - (a) Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).
 - (b) Debtor name change. An amendment that changes a debtor's name has no

effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC records that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC records. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

- (c) Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.
- (d) Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.
- (e) Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.
- (f) Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.
- (g) Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.
- (2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

*History Note: Authority G.S. 25-9-55A;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0305 ASSIGNMENT OF POWERS OF

SECURED PARTY OF RECORD

(a) An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(b) An assignment shall have no effect upon the status of the financing statement.

*History Note: Authority G.S.25-9-514;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0306 CONTINUATION

(a) Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

(b) The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(c) Upon the filing of a continuation statement, the status of the financing statement remains active.

*History Note: Authority G.S. 25-9-515(e);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0307 TERMINATION

(a) The filing of a termination shall have no effect upon the status of any party to the financing statement.

(b) A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will be become inactive one year after it is terminated with respect to all secured parties of record.

*History Note: Authority G.S. 25-9-513;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0308 CORRECTION STATEMENT

The filing of a correction statement shall have no effect upon the status of the financing statement or any party to the financing statement.

*History Note: Authority G.S. 25-9-518;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0309 PROCEDURE UPON LAPSE

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office. On the first anniversary of such lapse date, the information management systems renders or is caused to render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

*History Note: Authority G.S. 25-9-515(c);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0310 IACA STANDARD ADOPTED

(a) The XML Format as adopted by the International Association of Corporate Administrators is adopted in North

Carolina for electronic transmission of UCC records. At the request of an authorized XML remitter the filing officer shall identify which versions and releases of the XML Format are acceptable to the filing office. The current acceptable versions and document type definitions (DTD) are available at www.sosnc.com. An Efiling account must be created before submitting an XML filing.

(b) The electronic filing must pass verification to the current DTD (Document Type Definition) posted on www.sosnc.com. Failure to pass this verification will result in rejection of the record pursuant to G.S. 25-9-516(b)(1).

*History Note: Authority G.S. 25-9-526(b); 25-9-516(b)(1);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0311 IMPLEMENTATION GUIDE

The filing office publishes an implementation guide that prescribes the use of the XML Format. The guide shall be available on the Department's web site and to the public upon request.

*History Note: Authority G. S. 25-9-526(b);
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0312 DIRECT ON-LINE DATA ENTRY PROCEDURES

Upon application and approval of an E-filing account, the remitter shall receive direct on-line data entry procedures to file UCC records on-line. Persons interested in filing records in this manner shall contact the Department at the addresses listed in 18 NCAC 05A .0102.

*History Note: Authority G.S. 25-9-526;
Temporary Adoption Eff. July 2, 2001.*

SECTION .0400 – FILING AND DATA ENTRY PROCEDURES

18 NCAC 05A .0401 POLICY STATEMENT

This Section contains rules describing the indexing and filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to promptly file a document that conforms to these rules. Except as provided in these Rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests enter search criteria exactly as set forth on the search request. No effort shall be made to detect or correct errors of any kind that are made by the filer.

*History Note: Authority G.S. 25-9-519; 25-9-526;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0402 MINIMUM STANDARDS FOR INDEXING AND FILING UCC RECORDS

Minimum standards for indexing and filing UCC records shall be used by the filing office. The standards were originally approved in 1990 by the N. C. Association of Registers of Deeds and by the N. C. Bar Association as uniform standards for indexing land records. These standards have subsequently been modified for use in UCC record indexing and filing and are

currently in use by the UCC Section. The standards may be viewed at the UCC Section's web site at www.sosnc.com, or obtained by contacting the UCC Section.

History Note: Authority G.S. 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0403 DOCUMENT FILING, REVIEW, AND ACKNOWLEDGMENT

(a) Date and time stamp. The date and time of receipt are noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system at the earliest possible time.

(b) Cash Management. Transactions necessary to payment of the processing fee are performed.

(c) Document review. The filing office determines whether a ground exists to refuse the document under Section .0200 of this Subchapter.

(1) File stamp. If there is no ground for refusal of the document, the document is stamped or deemed filed and a unique identification number and the filing date is stamped on the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

(2) Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in Section .0200 of this Subchapter. If there is no ground for refusal of the document, an acknowledgment of filing is prepared to send to the person who has requested the acknowledgment. If the person who requests the acknowledgment desires an electronic acknowledgment, he shall provide an email address to the filing officer. If the acknowledgment has been requested to be sent by regular postal service, a self-addressed, stamped envelope for transmittal is highly recommended to accompany the UCC filing record being presented to the filing office. If the UCC document was tendered in person, notice of the refusal or acknowledgment of the filing is given to the remitter by personal delivery if possible. If the UCC document was tendered by E-filing, the acknowledgment is in the form of an XML document attached to an email and is electronically transmitted to the remitter.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0404 ENTRY OF INDIVIDUAL AND ORGANIZATIONAL NAMES

(a) In addition to the minimum standards for indexing UCC documents as provided in Rule .0402 of this Section, this Rule sets forth basic indexing procedures for UCC documents and

subsequently provides index retrieval information to persons who search the indexes for UCC data in the information management system.

(b) The names of debtors and secured parties who are "individuals" (human beings, or decedents in the case of a debtor that is such decedent's estate) shall be stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last name field on the UCC form. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

(c) The names of debtors and secured parties that are organizations shall be stored in files that include only the names of organization and not the names of individuals. A single field is used to store an organization name.

(d) If a trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered as if it were part of the name under Rule .0407 of this Section.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0405 FILING DATES AND LAPSE CALCULATIONS

(a) The filing date of a UCC document is the date the UCC document is received with the proper processing fee if the filing office is open to the public on that date or, if the filing office not so open on the date, the filing date is the next date the filing office is so open, except that, in each case, UCC documents received after 5:00 p.m. shall be deemed received on the following day. The filing officer performs any duty relating to the document on the filing date or on a date after filing date.

(b) The filing time of a UCC document is determined as provided in 18 NCAC 18A .0103.

(c) A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility as provided in Rule .0303 of this Subchapter). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant

anniversary for a February 29 filing date shall be March 1 in the fifth year following the year of the filing date.

History Note: Authority G. S. 25-9-515; 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0406 FILING ERRORS

(a) The filing office may correct the errors of the filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification date, the filing officer shall file an administrative action statement in the UCC information management system identifying the record to which it relates, the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

(b) An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or a correction statement can disclose it.

History Note: Authority G.S. 25-9-517; 25-9-518; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0407 DESIGNATED NAME FIELDS

A filing shall designate whether a name is a name of an individual or an organization and, if an individual also designates the first, middle and last names and any suffix. When this is done, the following rules shall apply:

- (1) Organization names. Organization names are entered into the UCC information system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.
- (2) Individual names. On a form that designates separate fields for first, middle, and last name and suffix, the filing office enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.
- (3) The filing office shall use only those forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and suffix. Such forms shall reduce the possibility of filing office error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office might cause filings to be ineffective.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0408 VERIFICATION OF DATA ENTRY

The filing officer uses visual verification to verify the accuracy of data entry tasks.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0409 CREATION OF NEW RECORDS

(a) Initial financing statement. A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time filing.

- (1) The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each such debtor name is included in the searchable index and is not removed until one year after the financing statement lapses. Debtor addresses are included in the searchable index.
- (2) The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.
- (3) The record is indexed according to the name of the debtor(s) and is maintained for public inspection.
- (4) A lapse date is established for the financing statement, unless the initial financing statement indicates it is filed against a transmitting utility, and the lapse date is maintained as part of the record.

(b) Amendment. A record is created for the amendment that bears the file number for the amendment and the date and time of filing.

- (1) The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.
- (2) The name and address of each additional debtor and secured party are entered into the UCC information management system in the record of the financing statement. Each such additional debtor name is added to the searchable index and is not removed until one year after the financing statement lapses. Debtor addresses are included in the searchable index.
- (3) If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

(c) Correction statement. A record is created for the correction statement that bears the file number for the correction statement and the date and time filing. The record of the correction statement is associated with the record of the related initial financing statement in a manner that causes the correction statement to be retrievable each time a record of the financing statement is retrieved.

History Note: Authority G.S. 25-9-519; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0410 ARCHIVAL DOCUMENTS

(a) Financing statements remain active and searchable for one year after they lapse. The following describes the maintenance of archives of inactive financing statements and the ability of those archived records to be searched.

- (1) Paper UCC records are on file in the filing office for at least six years, which includes an additional one year after the record has lapsed. After the six years has lapsed, the records are purged and recycled. Paper UCC records may be searched by submitting in Information Request Form to the filing office.
- (2) Microfilm of all UCC records dating from 1960 are kept on file for public inspection in the record and research areas in the filing office. The availability of these microfilmed records will be kept for an undeterminable time depending on need since these UCC records will henceforth be imaged in the information management system. The microfilm is also sent to the state records center for archiving. Searches on UCC records on microfilm may be conducted in the filing office.
- (3) Electronic images of UCC records dating from 1998 are available through the information management system and may be searched through the filing office's web site.

(b) Data in the UCC information management system relating to financing statements that have lapsed are retained for five years from the date of lapse and will thereafter be maintained in archives.

(c) For data that has been placed in an archived status may be searched by submitting an Information Request Form to the filing office.

*History Note: Authority G.S. 25-9-522;
Temporary Adoption Eff. July 2, 2001.*

SECTION .0500– SEARCH REQUESTS AND REPORTS

18 NCAC 05A .0501 GENERAL REQUIREMENTS

The filing officer maintains for public inspection a searchable index for all records of UCC records. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement and each filed UCC record relating to the initial financing statement.

*History Note: Authority G.S.25-9-523;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0502 SEARCH REQUESTS AND REPORTS

Search requests shall contain the following information:

- (1) Name searched. A search request shall set forth the correct name of the debtor to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

- (2) Requesting party. The name and address of the person to whom the search report is to be sent.
- (3) Fee. The appropriate fee shall be enclosed, payable by a method described in Rule .0105 of this Subchapter.
- (4) Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

*History Note: Authority G.S. 25-9-523;
Temporary Adoption Eff. July 2, 2001.*

18 NCAC 05A .0503 RULES APPLIED TO SEARCH REQUESTS

Search results are produced by the application of standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following rules shall apply to searches:

- (1) There is no limit to the number of matches that may be returned in response to the search criteria.
- (2) No distinction is made between upper and lower case letters.
- (3) Punctuation marks and accents are disregarded.
- (4) Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by IACA are disregarded. This list may be viewed or obtained by contacting the UCC Section.
- (5) The word "the" at the beginning of the search criteria is disregarded.
- (6) For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.

- (7) After using the preceding paragraphs of this Rule to modify the name to be searched, the search will reveal only names of debtors that are contained in unlapsed financing statements and, exactly match the name requested, as modified.

History Note: Authority G. S. 25-9-519; 25-9-523; 25-9-526; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0504 OPTIONAL INFORMATION

A UCC search request may contain any of the following information:

- (1) The request may limit the records requested by limiting them by the city and state of the debtor, and the date of filing or a range of filing dates. A report created by the filing officer in response to such a request shall contain the statement: "A limited search may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search".
- (2) The request may ask for copies of UCC records identified on the primary search response.
- (3) Instructions on the mode of delivery desired may be requested, if other than by ordinary mail, and will be honored if the requested mode is available to the filing office.

History Note: Authority G.S. 25-9-523; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0505 SEARCH RESPONSES

Reports created in response to a search request shall include the following:

- (1) Filing officer. Identification of the filing officer and the certification of the filing officer required by law.
- (2) Report date. The date the report was generated.
- (3) Name searched. Identification of the name searched.
- (4) Certification date. The certification date and time for which the search is effective.
- (5) Identification of initial financing statements. Identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.
- (6) History of financing statement. For each initial financing statement on the report, a listing of all related UCC records filed by the

filing officer on or prior to the certification date.

- (7) Copies. Copies of all UCC records revealed by the search and requested by the searcher.

History Note: Authority G.S. 25-9-519; 25-9-523; 25-9-526; Temporary Adoption Eff. July 2, 2001.

SECTION .0600 – NOTICE OF FEDERAL TAX LIEN

18 NCAC 05A .0601 POLICY STATEMENT

The purpose of the rules in this Section is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC records and are included on request with the reports described in 18 NCAC 05A .0502.

History Note: Authority G.S. 44-68.14(a)(1); 44-68.14(b); Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0602 FILING

(a) The UCC Section of the Department files Federal Tax Liens on corporations and partnerships whose executive office is located in North Carolina. These liens are indexed by the taxpayer's name and are available for public inspection. The Internal Revenue Service files Federal tax liens with the Department.

(b) The fee schedule for filing tax liens is available upon request.

(c) A notice of a tax lien filed by the Internal Revenue Service shall be filed and indexed in the filing office in the same manner as a UCC initial financing statements as provided in G.S. 25-9-519.

(d) A certificate of release or nonattachment shall be filed and indexed in the same manner as a UCC termination as provided in G.S. 25-9-519, except that the original notice of the tax lien shall not be removed or purged from the information management system in the filing office.

(f) A certificate of discharge or subordination shall be filed and indexed in the same manner as a UCC release of collateral as provided in G.S. 25-9-519.

History Note: Authority G.S. 44-68.5A; 44-68.14; 44-68.15; Temporary Adoption Eff. July 2, 2001.

18 NCAC 05A .0603 REQUESTS FOR INFORMATION

Requests for information on a tax lien shall be handled by the filing officer in the same manner as provided in G.S. 25-9-523(c). The fee for copies, certificates, and requests for information on tax liens is available upon request.

History Note: Authority G.S. 44-68.14(d); Temporary Adoption Eff. July 2, 2001.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, July 19, 2001, 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 by Friday, July 13, 2001 at 5:00 p.m. 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

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

July 19, 2001	September 20, 2001
August 16, 2001	October 18, 2001

RULES REVIEW COMMISSION

*Log of Filings
May 22, 2001 through June 20, 2001*

DHHS/SOCIAL SERVICES COMMISSION

Adoption Assistance Defined	10 NCAC 41H .0405	Amend
Eligibility Requirements for Monthly Cash	10 NCAC 41H .0406	Repeal
Eligibility Requirements for Regular Monthly Cash	10 NCAC 41H .0407	Amend
Procedures/Reimbursement of Adoption Assistance	10 NCAC 41H .0408	Amend

JUSTICE/CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

Suspension Revocation or Denial of Certification	12 NCAC 09A .0204	Amend
Period of Suspension Revocation or Denial	12 NCAC 09A .0205	Amend
Standards for Criminal Justice Officers	12 NCAC 09B .0101	Amend
Minimum Standards for State Youth Services Officer	12 NCAC 09B .0108	Amend
Basic Training Juvenile Detention Homes Personnel	12 NCAC 09B .0234	Amend
Report of Separation	12 NCAC 09C .0208	Amend
Reports of Training Course Presentation and	12 NCAC 09C .0403	Amend
General Provisions	12 NCAC 09D .0202	Amend

EDUCATION, STATE BOARD OF

End of Course Tests	16 NCAC 06D .0305	Amend
Student Accountability Standards	16 NCAC 06D .0502	Amend
Annual Performance Standards, Grades K-12	16 NCAC 06G .0305	Amend
Qualified Zone Academy Bonds	16 NCAC 06H .0111	Adopt

STATE BOARDS/N C BOARD OF PHYSICAL THERAPY EXAMINERS

Membership of Board	21 NCAC 48A .0103	Amend
Definitions	21 NCAC 48A .0105	Amend
General Requirements	21 NCAC 48B .0101	Amend
Licenses by Examination	21 NCAC 48B .0103	Amend
Exeptions	21 NCAC 48B .0104	Amend
Permitted Practice	21 NCAC 48C .0101	Amend
Responsibilities	21 NCAC 48C .0102	Amend
Supervision by Physical Therapist	21 NCAC 48C .0201	Amend

RULES REVIEW COMMISSION

Function	21 NCAC 48C .0402	Amend
Responsibilities	21 NCAC 48C .0601	Amend
Persons Refused Examination Permission	21 NCAC 48D .0107	Amend
Retaking Examination	21 NCAC 48D .0109	Amend
Foreign-Trained Physical Therapists	21 NCAC 48E .0110	Amend
Fees	21 NCAC 48F .0102	Amend
Change of Name and Address	21 NCAC 48F .0105	Adopt
Notification	21 NCAC 48G .0202	Amend
Restricted License	21 NCAC 48G .0204	Adopt
Grounds for Warning	21 NCAC 48G .0402	Amend
Conditions for Probation or Warning	21 NCAC 48G .0403	Amend
Grounds for Reprimand	21 NCAC 48G .0405	Amend
Complaints and Investigations	21 NCAC 48G .0504	Amend
Subpoenas	21 NCAC 48G .0512	Amend
Modification of Decision	21 NCAC 48G .0517	Adopt
Prohibited Actions	21 NCAC 48G .0601	Amend
Sanctions; Reapplication	21 NCAC 48G .0602	Adopt

AGENDA

RULES REVIEW COMMISSION
July 19, 2001

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Cultural Resources – 07 NCAC 04S .0104 Objection on 12/21/00 (DeLuca)
 - B. DHHS/Commission for MH/DD/SAS - 10 NCAC 45G .0306 Objection on 6/21/01 (DeLuca)
 - C. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
 - D. DENR-Soil and Water Conservation Commission - 15A NCAC 06G .0101 and .0102 Objection on 05/17/01 (DeLuca)
 - E. DENR-Soil and Water Conservation Commission – 15A NCAC 06G .0103 - .0106 Extend period of review on 05/17/01 (DeLuca)
 - F. Commission for Health Services – 15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334 Objection on 04/19/01 (Bryan)
 - G. NC Dept. of Transportation – 19A NCAC 02D .1003 Objection on 6/21/01 (DeLuca)
 - H. NC Board of Dietetics/Nutrition – 21 NCAC 17 .0101; .0104; .0105; .0107; .0109; .0114; .0115; .0116; .0302; .0303; .0304 Objection 6/21/01 (Bryan)
 - I. NC Board of Nursing – 21 NCAC 36 .0405 Objection 6/21/01 (DeLuca)
- IV. Review of rules (Log Report #177)
- V. Commission Business
- VI. Next meeting: Thursday, August 16, 2001

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 the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A.B. (Butch) Elkins*

<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>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
<u>HEALTH AND HUMAN SERVICES</u>				
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
<i>Child Support Enforcement Section</i>				
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01	
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01	
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01	
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01	
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01	
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01	
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01	
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01	
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01	
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Division of Social Services

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Audrey E Alston v. DHHS, Division of Facility Services 00 DHR 1017 Gray 06/14/01
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Willie Carl Wilson v. Private Protective Services Board 01 DOJ 0580 Morrison 06/04/01

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