

NORTH CAROLINA

IN THIS ISSUE



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
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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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
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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
16:05	09/04/01	08/13/01	11/15/01	09/19/01	10/04/01	10/22/01	05/00/02	11/05/01	11/20/01	05/00/02	06/01/02
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16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/31/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
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.

**EXECUTIVE ORDER NO. 11
IMPLEMENTATION OF THE STATE DISASTER
ASSISTANCE PROGRAMS FOR A TYPE I DISASTER
FOR MADISON COUNTY**

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, N.C.G.S. §166A-6, authorizes the issuance of a proclamation defining the area subject to the state of disaster and proclaiming the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on August 7, 2001, I proclaimed the existence of a state of disaster and a state of emergency in Madison County and the existence of a Type I disaster in Madison County; and

WHEREAS, pursuant to G.S. §166A-6, the criteria for a Type I disaster are met including the following: 1) Receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; 2) Madison County declared a local state of emergency pursuant to G.S. §166A-8 and G.S. §14-288.13 and forwarded a written copy of the declaration to the Governor; 3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. §166A-6A(b)(2)a.; and 4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. §166A-6A, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance as authorized by this section to administer State disaster assistance programs established by the Governor for recovery from those disasters for which federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §5121 *et seq.* is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

Section 1. I authorize State disaster assistance in the form of grants to individuals and families which shall include benefits comparable to those provided by the Stafford Act and may be provided for the following, including but not limited to:

1. The provision of temporary housing and rental assistance in accordance with Section 408 of the Stafford Act and applicable rules, regulations, and policies including, but not limited to, 44 C.F.R. §206.101 and/or in accordance with any amendments to the aforementioned authorities;

2. The provision of repair or replacement of dwellings, which may include amounts necessary to locate the individual or family in safe, decent and sanitary housing in accordance with Section 408 of the Stafford Act and applicable rules, regulations, and policies including, but not limited to, 44 C.F.R. §206.101 or in accordance with the Hurricane Floyd Act of 1999 Crisis Housing Assistance and applicable rules, regulations, guidelines and policies and/or in accordance with any amendments to the aforementioned authorities;
3. The provision of replacement of personal property (including clothing, tools, and equipment) in accordance with Section 411 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.131, the Individual and Family Grant Program Administrative Plan, the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities;
4. The provision of repair or replacement of privately owned vehicles in accordance with Section 411 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.131, the Individual and Family Grant Program Administrative Plan and the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities;
5. The provision of medical or dental expenses in accordance with Section 411 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.131, the Individual and Family Grant Program Administrative Plan and the Individual and the Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities;
6. The provision of funeral or burial expenses resulting from the disaster in accordance with Section 411 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.131, the Individual and Family Grant Program Administrative Plan and the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities;
7. Funding for the cost of the first year's flood

insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. §4001 *et. seq.* in accordance with Section 411 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.131, the Individual and Family Grant Program Administrative Plan and the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities.

Section 2. I authorize State disaster assistance in the form of public assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. §166A-6A(b)(2) for the following purposes only:

1. Debris clearance in accordance with Sections 403 and 407 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.224, 44 C.F.R. §206.225, the FEMA Public Assistance Guide, the FEMA Public Assistance Policy Digest, and the FEMA Debris Management Guide and/or in accordance with any amendments to the aforementioned authorities.
2. Emergency protective measures in accordance with Section 403 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.225, the FEMA Public Assistance Guide, and the FEMA Public Assistance Policy Digest and/or in accordance with any amendments to the aforementioned authorities;
3. Roads and bridges in accordance with Sections 403, 406 and 408 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.226 and 44 C.F.R. §206.101(g)(4)((iii)(K), the FEMA Public Assistance Guide, and the FEMA Public Assistance Policy Digest and/or in accordance

with any amendments to the aforementioned authorities.

4. Crisis counseling in accordance with Section 416 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.171, the Individual and Family Grant Program Administrative Plan and the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities;
5. The provision of assistance with public transportation needs in accordance with Section 419 of the Stafford Act and applicable rules, regulations and policies including, but not limited to, 44 C.F.R. §206.225, the Individual and Family Grant Program Administrative Plan and the Individual and Family Grant Program Handbook and/or in accordance with any amendments to the aforementioned authorities.

Section 3. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for Madison County issued on August 7, 2001 unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

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.

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

Project Homestead, Inc.

Pursuant to N.C.G.S. § 130A-310.34, Project Homestead, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Greensboro, Guilford County, North Carolina. The Property consists of 2.67 acres and is located at 709-723 East Market Street. Environmental contamination exists on the Property in soil and groundwater. Project Homestead, Inc. has committed itself to redevelop the Property as a multi-use complex exclusively comprised of approximately 15,000 square feet of retail space, 10,500 square feet of office space and a bank location of 5,000 square feet. In light of previous environmental investigation and remediation activities conducted at the Property, the land use restrictions included in the proposed Notice of Brownfields Property referenced below and the well abandonment requirements of the proposed Brownfields Agreement referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Project Homestead, Inc., 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 Greensboro Public Library, 219 N. Church St., Greensboro, NC 27401, 2nd floor reference desk by contacting Sherry Antonowicz at that address or at (336) 373-2471, 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 meeting 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 Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

CMDC WILKINSON NO.1 2000, L.L.C.

Pursuant to G.S. 130A-310.34, CMDC Wilkinson No.1 2000, 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 Charlotte, Mecklenburg County, North Carolina. The Property consists of 33 acres on the south side of Wilkinson Boulevard in Charlotte, Mecklenburg County, North Carolina, and some parcels south of said Wilkinson Boulevard, between the 3500 and 3900 blocks of said Wilkinson Boulevard. The tract comprises the following tax parcel identification numbers:

117-124-09	117-125-24	117-124-13
117-123-03	117-122-06	117-125-05
117-124-02	117-122-07	117-125-06
117-123-08	117-123-01	117-125-08
117-124-03	117-123-02	117-125-09
117-125-15	117-123-04	117-125-16
117-125-13	117-123-06	117-125-17
117-125-14	117-123-07	117-125-18
117-124-10	117-123-09	117-125-25
117-125-07	117-124-01	117-125-26
117-125-23	117-124-04	117-125-19
117-123-05	117-124-05	117-125-10
117-124-11	117-124-06	117-125-11
117-125-21	117-124-07	117-125-12
117-124-08	117-124-12	117-125-22

Environmental contamination exists on the Property in soil and groundwater. CMDC Wilkinson No.1 2000, L.L.C. has committed itself to redevelop the Property exclusively as a business park for office space, industrial, and manufacturing purposes. In light of previous environmental investigation and remediation activities conducted at the Property, the land use restrictions included in the proposed Notice of Brownfields Property referenced below and the well abandonment and groundwater reporting requirements of the proposed Brownfields Agreement referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and CMDC Wilkinson No.1 2000, L.L.C., 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 in the Carolina Room at the Main Branch of the Public Library of Charlotte and Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202, (704) 336-2980; 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 meeting 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 Environment 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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 07 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the Coastal 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 07H .1703; 07K .0203 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-103(5)c; 113A-107(a)(b); 113A-113(b); 113A-118(a); 113A-118.1; 113A-119.1; 113A-229(cl)

Statement of the Subject Matter:

15A NCAC 07H .1703 – General Permit Fee Increase
15A NCAC 07K .0203 - Repeal of bulkhead exemption

Reason for Proposed Action:

15A NCAC 07H .1703 – This Rule is proposed for amendment because at present, there is no charge for sandbag placement authorized under the general permit for emergency work (15A NCAC 07H .1700). This is inconsistent with the amount of staff time and effort necessary in permitting and monitoring sandbags. Although the number of general permits for sandbags is not significant on a yearly basis, the record-keeping effort and complexity of enforcement issues are. The Coastal Management staff proposed the fee to offset future monitoring and record-keeping costs. For this reason, the staff also recommended that the fee be higher than other Coastal Area Management Act (CAMA) general permits (\$250 instead of \$100 or \$50). Other emergency work authorized under the general permit would not be subject to the fee.

15A NCAC 07K .0203 - This Rule is proposed for repeal because currently, there is no fee for bulkheads, riprap and piers that meet certain exemption criteria (15A NCAC 07K .0203). But the staff time involved in authorizing these structures is similar to that of a general permit. A site visit is always required, and proper written authorization must be given to the applicant. If the CRC does away with the exemption, projects that currently qualify for it could be authorized under a CAMA general permit. Staff does not issue many exemptions for bulkheads, riprap or piers, so eliminating this type of authorization should not create any significant hardship to the public. Staff estimates that only five percent of bulkhead, riprap and pier projects are authorized under the exemption. The

remaining 95 percent are authorized by permit. General permits for these projects cost \$100.

Comment Procedures: Comments may be submitted to Charles S. Jones, Assistant Director, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone 252-808-2808.

Notice of Rule-making Proceedings is hereby given by NC 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 10. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-15; 113-132; 113-134; 113-264; 113-267; 113-270; 113-270.1; 113-270.1A; 113-273; 113-291.2; 113-291.4

Statement of the Subject Matter: Hunting, Fishing, Gamelands, Water Safety, Access Areas; Licensing, Conservation, Motorboat Safety, Endangered, Threatened and Special Concern Species; Regulated Activities and Hunter Safety rules.

Reason for Proposed Action: To set/amend regulations necessary to manage and conserve wildlife resources and maintain public safety.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

Notice of Rule-making Proceedings is hereby given by the North Carolina Medical Board 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: 21 NCAC 32 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-514; S.L. 2001, c. 211; S.L. 2001, c. 220

Statement of the Subject Matter: Medical license

Reason for Proposed Action: The purpose of the rule change is to clarify and simplify the process of applying for a medical license and to bring the application process up to date in accordance with national trends.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Helen D. Meelheim, Rule-making Coordinator, PO Box 20007, Raleigh, NC 27619.

CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

Notice of Rule-making Proceedings is hereby given by the NC Medical Board 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: 21 NCAC 32H .0100-.1000; 32I .0101-.0104 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-514; S.L. 2001, c. 211; S.L. 2001, c. 220

Statement of the Subject Matter: The NC Medical Board plans to repeal 21 NCAC 32H .0101-.0102, .0201-.0203, .0301-.0304, .0401, .0409, .0501-.0508, .0601-.0603, .0701, .0801-.0802, .0901-.0903, .1001-.1004; 32I .0101-.0104. These Rules pertain to Emergency Medical Services. The purpose of this rule-making action is to respond to a recent action of the NC General Assembly whereby Session Laws 2001-211 and 2001-220 were passed.

Reason for Proposed Action: The NC General Assembly recently passed House Bill 452 (Session Lay 2001-220) and House Bill 453 (Session Law 2001-211). These two pieces of legislation amend G.S. 143-56 and G.S. 143-540 to update EMS terminology, definitions, roles and responsibilities. As such, changes are needed to existing rules to ensure compliance with the new laws. The Medical Board proposes to repeal existing rules.

Comment Procedures: Written comments concerning the rule-making action must be submitted to Helen D. Meelheim, Rule-making Coordinator, PO Box 20007, Raleigh, NC 27619.

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice of Rule-making Proceedings is hereby given by Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors 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: 21 NCAC 50 .0103-.0104; .0106; .0301; .0304; .0306; .0308; .0404; .0411; .1103. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 87-18

Statement of the Subject Matter: Changes in office hours, Board elections, personnel titles, conversion to computer-based examination of applicants, alteration of experience requirements for license applicants, creation of additional education and training requirements for failed examinees, creation of on-line license register, clarification of employment and supervision requirements and standards.

Reason for Proposed Action: 21 NCAC 50 .0103-.0104; .0106; .0301; .0306; .0308; .0404; .0411 - Recent legislation has mandated certain changes and has authorized others. In addition, minor changes in text of rules and changes to match current procedures are being contemplated. Also, temporary rules are being adopted with respect to rules not mentioned here, the public hearings for which will be carried out with eventual public hearing on the rule changes described here.

21 NCAC 50 .0304; .1103 – The General Assembly has eliminated special examinations and different fees for persons from towns less than 10,000 population. Repeal of these rules in conflict with the statutes is contemplated.

Comment Procedures: Comments should be directed to Rulemaking Coordinator, 3801 Wake Forest Road, Suite 201, Raleigh, NC 27609.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

CHAPTER 02 – COMMUNITY COLLEGES

Notice of Rule-making Proceedings is hereby given by the North Carolina State Board of Community Colleges 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: 23 NCAC 02E .0402-.0403 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: *G.S. 115D-1; 115D-5*

Statement of the Subject Matter:

23 NCAC 02E .0402 – *Provisions of Occupations Skills Training to businesses, industries and governmental organizations*

23 NCAC 02E .0403 – *To regulate curriculum in a correctional setting*

Reason for Proposed Action:

23 NCAC 02E .0402 – *This rule-making proceeding was initiated to modify the conditions under which occupational*

skills training may be provided to businesses, industries and governmental organizations.

23 NCAC 02E .0403 – *This rule-making proceeding was initiated to prohibit the offering of physical education or work experience as part of a curriculum in a correctional setting.*

Comment Procedures: *Written comments may be sent to Clay T. Hines, North Carolina Community College System, 5004 Mail Service Center, Raleigh, NC 27699-5004 until October 17, 2001.*

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 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0102, .0203, .0205, .0215, .0233; 09C .0403; 09D .0102, .0104-.0105, .0202, .0204-.0205. Notice of Rule-making Proceedings was published in the Register on July 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 14, 2001

Time: 10:00 a.m.

Location: Hilton Wilmington Riverside, Wilmington, NC

Reason for Proposed Action: The North Carolina Criminal Justice Education and Training Standards Commission has authorized rule-making authority to amend several of its 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 Programs.

Comment Procedures: Written comments should be directed to Scott Perry, Criminal Justice Standards Division, Room G-25, Old Education Building, 114 W. Edenton St., PO Drawer 149, Raleigh, NC 27602-0149. Comments will be accepted through November 14, 2001.

Fiscal Impact

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

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

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

SECTION .0100 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0102 BACKGROUND INVESTIGATION

(a) Any agency contemplating the employment of an applicant as a criminal justice officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a

criminal justice officer and shall determine whether the applicant is of good moral character.

(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form to provide a basis for the investigation.

(c) The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
(2) family data;
(3) scholastic data;
(4) employment data;
(5) criminal history data;
(6) interviews with the applicant's references; and
(7) a summary of the investigator's findings and conclusions regarding the applicant's moral character.

(d) For criminal justice officers employed by the North Carolina Department of Correction, the agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form must be used as a guide of minimum information to be collected and to collect minimum information to be recorded by the investigator for all other criminal justice officer applicants that are regulated by the Commission.

(e) Upon written request by the Director of the Standards Division, the employing agency shall provide the Commission with a copy of any background investigation retained by the agency.

Authority G.S. 17C-6.

SECTION .0200 - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school may not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment with prior written approval from the Director of the Standards Division as long as they turn 20 years of age prior to the date of the State Comprehensive Examination for the course.

(b) The school shall give priority admission in accredited criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(c) The school may not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training

Course" who will does not meet the minimum education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within three months of successful completion of the Instructor Training State Comprehensive Examination.

(d) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.

(e) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the certified School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, to determine the individual's fitness to perform the essential job functions of a criminal

justice officer. The Director of the Standards Division is authorized to grant an exception to this for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

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

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 602 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

(1)	LEGAL UNIT	
	(A) Motor Vehicle Laws	20 Hours
	(B) Preparing for Court and Testifying in Court	12 Hours
	(C) Elements of Criminal Law	24 Hours
	(D) Juvenile Laws and Procedures	8 Hours
	(E) Arrest, Search and Seizure/Constitutional Law	28 Hours
	(F) ABC Laws and Procedures	4 Hours
	UNIT TOTAL	96 Hours
(2)	PATROL DUTIES UNIT	
	(A) Techniques of Traffic Law Enforcement	24 Hours
	(B) Explosives and Hazardous Materials Emergencies	12 Hours
	(C) Traffic <u>Accident Crash</u> Investigation	20 Hours
	(D) In-Custody Transportation	8 Hours
	(E) Crowd Management	12 Hours
	(F) Patrol Techniques	20 Hours
	(G) Law Enforcement Communication and Information Systems	8 Hours
	UNIT TOTAL	104 Hours
(3)	LAW ENFORCEMENT COMMUNICATION UNIT	
	(A) Dealing with Victims and the Public	10 Hours
	(B) Domestic Violence Response	12 Hours
	(C) Ethics for Professional Law Enforcement	4 Hours
	(D) Individuals with Mental Illness and Mental Retardation	8 Hours
	(E) Crime Prevention Techniques	6 Hours
	(F) Communication Skills for Law Enforcement Officers	8 Hours
	UNIT TOTAL	48 Hours
(4)	INVESTIGATION UNIT	
	(A) Fingerprinting and Photographing Arrestee	6 Hours
	(B) Field Note-taking and Report Writing	12 Hours
	(C) Criminal Investigation	32 Hours
	(D) Interviews: Field and In-Custody	16 Hours
	(E) Controlled Substances	10 Hours
	UNIT TOTAL	76 Hours
(5)	PRACTICAL APPLICATION UNIT	
	(A) First Responder	40 Hours
	(B) Firearms	48 Hours
	(C) Law Enforcement Driver Training	40 Hours
	(D) Physical Fitness	8 Hours
	(i) Fitness Assessment and Testing	12 Hours
	(ii) 1 hour - 3 days a week	34 Hours
	(E) Subject Control Arrest Techniques	40 Hours
	UNIT TOTAL	222 Hours

(6)	SHERIFF-SPECIFIC UNIT	
	(A) Civil Process	24 Hours
	(B) Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C) Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	20 Hours
	TOTAL COURSE HOURS	602 Hours

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of 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 obtained from the Academy at the following address:

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

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy shall be used by certified School Directors in planning, implementing and delivering basic training courses. Each certified School Director shall be issued a copy of the guide at the time of certification at no cost to the accredited school. The public may obtain copies of this guide from the Justice Academy.

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

12 NCAC 09B .0215 SUPPLEMENTAL SMI TRAINING

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

- (1) possess a valid radar and/or time-distance speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 9B .0210, .0211, .0212, .0213 or .0214.
- (2) present the endorsement of a commission-recognized school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include but not be limited to the topic areas and minimum number of hours as outlined in The Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall ~~meet the minimum requirements as outlined in The Supplemental SMI Training Course and meet the requirements of 12 NCAC 9B .0408 and .0409; demonstrate 100 percent proficiency in the performance of the additional speed measuring instrument(s).~~

(d) Certification as instructor and/or operator of the additional speed measuring instruments shall expire on midnight of the date of expiration of the instructor and/or operator certification referred to in 12 NCAC 9B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

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

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

(f) Commission-accredited schools that are accredited to offer the "Supplemental SMI Training Course" for Instructors are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of ~~47~~ 60 hours of instruction presented during a continuous period of not more than one week.

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

physical fitness instructor in a Basic Law Enforcement Training Course.

(c) Each applicant for specialized physical fitness training shall:

- (1) qualify through one of the following three options:
 - (A) have completed the criminal justice general instructor training course; or
 - (B) 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

(1)	Orientation	3 5 Hours
(2)	Lesson Plan Review	4 8 Hours
(3)	Physical Fitness Assessments, Exercise Programs and Instructional Methods	24 31 Hours
(4)	Injury Care and Prevention	4 Hours
(5)	Nutrition	6 Hours
(6)	Civil Liabilities for Trainers	2 Hours
(7)	CVD Risk Factors	2 Hours
(8)	State Examination	2 Hours
	TOTAL	4760 Hours

- (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education; and
- (2) present a written endorsement by a certified school director indicating the student will be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; and
- (3) present a letter from a physician stating fitness to participate in the course; and
- (4) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized physical fitness instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized physical fitness 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 obtained at no cost to the student from the Academy at the following address:

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

(f) Commission-accredited schools that are accredited to offer the "Specialized Physical Fitness Instructor Training" course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

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

SECTION .0400 - ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS AND TRAINING COURSES

16 NCAC 09C .0403 REPORTS OF TRAINING

COURSE PRESENTATION AND COMPLETION

(a) Each presentation of the "Basic Law Enforcement Training" course shall be reported to the Commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall notify the Commission of the school's intent to offer the training course by submitting a Pre-delivery Report of Training Course Presentation; and
- (2) Upon completing delivery of the accredited course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall notify the Commission regarding the progress and achievement of each enrolled trainee by submitting a Post-delivery Report of Training Course Presentation.

Note: Special arrangements shall be made between the Standards Division and the school director for the reporting of law enforcement achievement in a Public Safety Officer course.

(b) Upon successful completion of a ~~commission-accredited~~ **Commission-accredited** training course by ~~correctional~~-state youth ~~services, or probation/parole services~~ 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.

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

SUBCHAPTER 09D – PROFESSIONAL CERTIFICATE

PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICERS' PROFESSIONAL CERTIFICATE PROGRAM

12 NCAC 09D .0102 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:

- (1) The officer shall presently hold general law enforcement officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics.
- (3) The officer shall be a full-time, sworn, paid member of a law enforcement agency within the state.
- (4) All applicants who became full-time, sworn, paid members of a law enforcement agency within the state on or after October 1, 1984, shall be given credit for satisfactory completion of only one commission-accredited basic training program for purposes of calculating training points.
- (5) Full-time, paid employees of a law enforcement agency within the State who have successfully completed a commission-accredited law enforcement officer basic training program and have previously held general law enforcement officer certification as specified in 12 NCAC 09D .0102(a)(1), but are presently, by virtue of promotion or transfer, serving in non sworn positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the law enforcement agency from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula which combines formal education, law enforcement training, and actual experience as a law enforcement 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) Twenty classroom hours of commission-approved law enforcement training shall equal one point;
- (3) Only experience as a full-time, sworn, paid member of a law enforcement agency

or equivalent experience shall be acceptable for consideration.

~~(e) Certificates shall be awarded in an officer's area of expertise only. Separate sub programs shall be administered as follows:~~

- ~~(1) General Law Enforcement Certificate. The General Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by units of local government with authority to arrest for any violation of the criminal law and to arrest anywhere within the boundaries of the unit, including:

 - ~~(A) municipal and county police officers;~~
 - ~~(B) local ABC board enforcement officers.~~~~
- ~~(2) State Law Enforcement Certificate. The State Law Enforcement Certificate is appropriate for full-time, sworn law enforcement officers employed by an agency of state government, with authority to arrest throughout the state, including:

 - ~~(A) Special agents of the State Bureau of Investigation;~~
 - ~~(B) State Highway Patrol officers;~~
 - ~~(C) State Alcohol Law Enforcement officers;~~
 - ~~(D) Division of Motor Vehicles officers;~~
 - ~~(E) Fisheries enforcement officers;~~
 - ~~(F) Wildlife enforcement officers; and~~
 - ~~(G) State forest rangers.~~~~
- ~~(3) Special Law Enforcement Certificate. The Special Law Enforcement Certificate is appropriate for other full-time, sworn law enforcement officers with arrest authority, including:

 - ~~(A) Security officers for State buildings and agencies;~~
 - ~~(B) Airport security officers;~~
 - ~~(C) Campus police officers;~~
 - ~~(D) Company police officers;~~
 - ~~(E) Department of Correction extradition officers; and~~
 - ~~(F) Parks and recreation commissions enforcement officers.~~~~

~~(d) There shall be limited reciprocity between sub programs. Only training and experience gained in an officer's area of expertise shall be eligible for application to the sub program.~~

Authority G.S. 17C-6.

12 NCAC 09D .0104 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have

Educational Degrees				AA/A	AB/BS
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points	-	-	-	22	21
Minimum Total Education and Training Points	37	67	97	22	21

acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

(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 American Council on Education, or the state university of the state in which the institution is located. must be issued by institutions recognized by the United States Department of Education and the Council of Higher Education Accreditation.~~

12 NCAC 09D .0105 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0102(a) of this Subchapter, an applicant for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of full-time law enforcement experience:

Authority G.S. 17C-6.

Educational Degrees				AA/AS	AB/BS	GRAD./PRO.
Years of Law Enforcement Experience	12	9	9	9	6	4
Minimum Law Enforcement Training Points	-	-	31	31	25	21
Minimum Total Education and Training Points	67	97	31	31	25	21

(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 American Council on Education, or the state university of the state in which the institution is located. must be issued by institutions recognized by the United States Department of Education and the Council of Higher Education Accreditation.~~

(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 9D .0202(a)(4):

- (1) The officer shall presently hold general criminal justice officer certification. A person serving under a probationary certification is not eligible for consideration.
- (2) The officer shall hold general certification with the ~~commission~~ Commission in ~~one of the following categories:~~
 - (A) ~~correctional officer;~~
 - (B) ~~probation/parole officer;~~
 - (C) ~~probation/parole intake officer;~~
 - (D) ~~state youth services officer;~~
 - (E) ~~parole case analyst;~~

Authority G.S. 17C-6.

SECTION .0200 - CRIMINAL JUSTICE OFFICERS' PROFESSIONAL CERTIFICATE PROGRAM

12 NCAC 09D .0202 GENERAL PROVISIONS

~~(F) probation/parole officer surveillance;~~
~~(G) probation/parole intensive officer. the category of state youth services officer.~~

- (3) The officer shall be a permanent, paid member of a criminal justice agency within the State.
- (4) Permanent, paid employees of the ~~Department of Correction and the Division of Youth Services, Department of Human Resources, Department of Juvenile Justice and Delinquency Prevention~~, who have successfully completed a ~~commission-accredited~~ Commission-accredited criminal justice officer basic training program and have previously held general certification as specified in 12 NCAC 09D .0202(a)(1) and 12 NCAC 09D .0202(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 or Division of Youth Services~~ Department of Juvenile Justice and Delinquency Prevention 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, criminal justice training, and actual experience as a criminal justice officer. Points are computed in the following manner:

12 NCAC 09D .0204 INTERMEDIATE CRIMINAL JUSTICE CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0202(a) of this Subchapter, an applicant for the Intermediate Criminal Justice Certificate shall possess or be eligible to possess the Basic Criminal Justice Certificate and shall have acquired the following combination of educational points or degrees, criminal justice training points and years of criminal justice experience:

Educational Degrees	AA/AS			AB/BS
Years of Criminal Justice Experience	8	6	4	2
Minimum Criminal Justice Training Points	-	-	-	10
Minimum Total Education and Training Points	30	60	90	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. must be issued by institutions recognized by the United States Department of Education and the Council of Higher Education Accreditation.~~

Authority G.S. 17C-6.

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) Twenty classroom hours of ~~commission-approved~~ Commission-approved criminal justice training shall equal one point;
- (3) Only experience as a permanent, paid member of a criminal justice agency 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. ~~Separate sub programs will be administered as follows:~~

- ~~(1) Corrections Certificate. The Corrections Certificate is appropriate for permanent, paid correctional employees employed by the Department of Correction.~~
- ~~(2) Youth Services Certificate. The Youth Services Certificate is appropriate for permanent, paid state youth services officers employed by the Division of Youth Services of the Department of Human Resources, Department of Juvenile Justice and Delinquency Prevention.~~

~~(d) There shall be limited reciprocity between sub programs. Only training and/or experience gained in an officer's area of expertise will be eligible for application to the sub program.~~

Authority G.S. 17C-6.

12 NCAC 09D .0205 ADVANCED CRIMINAL JUSTICE CERTIFICATE

(a) In addition to the qualifications set forth in Rule .0202(a) of this Subchapter, an applicant for the Advanced Criminal Justice Certificate shall possess or be eligible to possess the Intermediate Criminal Justice Certificate and shall have acquired the following combinations of educational points or degrees, criminal justice training points and years of criminal justice experience:

Educational Degrees	AA/AS		AB/BS		GRAD./PRO.
Years of Criminal Justice Experience	12	9	9	6	4
Minimum Criminal Justice 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.~~ must be issued by institutions recognized by the United States Department of Education and the Council of Higher Education Accreditation.

Authority G.S. 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02I .0501-.0504, .0601-.0603. Notice of Rule-making Proceedings was published in the Register on May 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: October 30, 2001

Time: 2:00 p.m.

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

Reason for Proposed Action: *The Administrative Procedure Act, G.S. 150B-4 and G.S. 150B-20, requires the Environmental Management Commission to set forth in its rules the procedures to be followed by persons requesting declaratory rulings and changes in the Commission's rules. These Rules describe the procedures for submitting petitions and requesting declaratory rulings and the procedures the Commission follows in considering petitions and declaratory rulings. These Rules will apply to the Divisions of Air Quality, Water Quality and Water Resources within the Department of Environment and Natural Resources.*

Comment Procedures: *Comments may be presented at the public hearing on October 30, 2001 and/or in writing by December 15, 2001. The Environmental Management Commission will consider all relevant comments and encourages*

any person(s) affected by the proposed rules to submit comments. All comments received are public record. Submit written comments by the December 15, 2001 deadline to Mr. Jeff Manning, DWQ Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, questions may be directed to Jeff.Manning@ncmail.net or (919) 733-5083, ext. 579.

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02I – HEARINGS

SECTION .0500 – PETITIONS FOR RULEMAKING

15A NCAC 02L .0501 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission (hereinafter referred to as the Commission) shall make his request in a petition addressed to the Director of the appropriate division of the Department of Environment and Natural Resources:

Director
Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules or orders;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (9) the name(s) and address(es) of the petitioner(s).

(c) When petitions and supporting documents and data exceed 10 pages in length, 20 copies of the whole petition and any attachments shall be submitted.

(d) Petitions failing to contain the required information shall be returned by the Director.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0502 REVIEW BY A COMMITTEE OF THE COMMISSION

(a) The Director shall refer duly submitted petitions to the appropriate subject area committee of the Commission for review and recommended action. Copies of Petitions for Rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) Within 10 days of the assignment of the petition, the chairman of the committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.

(c) At least 15 days before the committee meeting, the Director shall send notice of the committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) The petitioner shall be afforded the opportunity to present the petition for rulemaking to the committee. The Director, through staff, may make a presentation to the committee.

(e) Interested persons must request the opportunity to make a presentation to the committee through the Director. The request shall:

- (1) state the interest of the person;
- (2) the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials. The chairman of the committee shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The chairman of the committee is granted the

discretion to determine whether additional interested persons make oral presentations before the committee.

(f) The chairman of the committee is granted the discretion to determine whether a public hearing should be conducted by the committee before it makes a recommendation on the petition for rulemaking.

(g) During the committee's review, members of the Commission, other than committee members, who are present may participate as a member of the committee in discussions of the petition but may not vote on the recommended action on the petition.

(h) The Director may deem a petition complete only after it has been reviewed by a committee of the Commission and is accompanied by a recommended action from the committee.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for Rulemaking, when deemed complete by the Director under 15A NCAC 02I .0501(d) and after review by the appropriate committee under 15A NCAC 02I .0502, shall be presented to the Environmental Management Commission for its consideration and determination at a regularly scheduled meeting of the Commission within 120 days following the date of submission of the petition. The Petition for Rulemaking and the committee's recommended action shall be presented through the committee chairman or other designated member of the committee during the business session of the Commission. Unless the Chairman of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the commission, and the Director.

(b) Within 120 days following submission of the petition requesting rulemaking, the Environmental Management Commission shall:

- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
- (2) deny the petition in writing, stating the reasons or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

Authority G.S. 143B-282; 150B-20.

15A NCAC 02I .0504 RECOURSE TO DENIAL OF PETITION

If the Environmental Management Commission denies the Petition for Rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4.

Authority G.S. 143B-282; 150B-20.

SECTION .0600 - DECLARATORY RULINGS

15A NCAC 02I .0601 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Environmental Management Commission may issue a declaratory ruling as provided in G.S. 150B-4.

Authority G.S. 150B-4.

15A NCAC 02I .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division of the Department of Environment and Natural Resources (DENR), 1617 Mail Service Center, Raleigh, North Carolina 27699-1617. All requests shall include the following:

- (1) the aggrieved person's name and address;
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

(b) A request for a ruling on the applicability of a rule, order, or statute must include a statement of the specific facts proposed for adoption by the Commission and documentation supporting those facts. A request for a ruling on the validity of a commission rule must state the aggrieved person's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved persons' position. A person may ask for both types of rulings in a single request.

(c) A person may petition to become a party-intervenor to the request for declaratory ruling by filing a motion to intervene in the manner provided in G.S. 150B-23(d). A motion to intervene in a request for a declaratory ruling on the applicability of a rule, order, or statute, must contain a statement of agreement with the stipulated facts agreed upon by the parties. The motion to intervene shall be referred to the Steering Committee which shall make a recommendation to the Commission on whether to grant or deny the motion.

(d) The petition for declaratory ruling shall be referred to the Steering Committee. The Department staff shall determine whether it will stipulate to the facts proposed for adoption and shall provide a written recommendation to the Committee as to the applicability of any of the criteria in Paragraph (h) of this Rule to the petition presented. The Steering Committee shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.

(e) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from petitioner(s);

- (2) request a written response from the Department staff or any other person; and
- (3) hear oral argument from the petitioner(s) and Department staff or their legal counsel.

(f) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Department may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the stipulated facts agreed upon by the parties.

(g) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(h) For purposes of Paragraph (g) of this Rule, the Commission will ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the petitioner(s) and the Department cannot agree on stipulated facts sufficient to support a ruling; or
- (2) there has been a similar determination in a previous contested case or declaratory ruling; or
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or
- (4) no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented; or
- (5) other good cause exists for declining to issue the requested ruling.

(i) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written submissions by the parties;
- (3) the stipulated facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(j) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(k) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days after the parties have agreed to stipulated facts or after the receipt of the petitioner's legal memorandum in the case of a request for a ruling on the validity of a rule shall constitute a denial of the request as well as a denial of the merits of the request.

(1) G.S. 150-B, Article 4 governs judicial review of the decision or order of the Commission under G.S. 150-B-4.

Authority G.S. 150B-4.

15A NCAC 02I .0603 DEFINITION

For purposes of Rule .0602 of this Subchapter, a declaratory ruling shall be deemed to be in effect:

- (1) until the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
- (2) until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) until the Commission changes the declaratory ruling prospectively for good reasons; or
- (4) until any court sets aside the ruling in litigation between the Commission or Department of Environment and Natural Resources and the party requesting the ruling.

Authority G.S. 150B-4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sedimentation Control Commission intends to amend the rule cited as 15A NCAC 04B .0126. Notice of Rule-making Proceedings was published in the Register on June 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: October 4, 2001

Time: 7:00 p.m.

Location: Ground Floor Hearing Room, Archdale Bldg., Raleigh, NC

Reason for Proposed Action: *The Sedimentation Control Commission has determined that an increase in the plan review fee is needed to provide additional resources for the Erosion and Sedimentation Control Program. These additional resource needs are identified in the Commission's Plan of Action adopted on November 19, 1997.*

Comment Procedures: *Written comments may be submitted to Mell Nevils, Section Chief, Division of Land Resources-Land Quality Section, 1612 Mail Service Center, Raleigh, NC 27699-1612, 919/733-4574 extension 701.*

Fiscal Impact

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

CHAPTER 04 – SEDIMENTATION CONTROL

SUBCHAPTER 04B – EROSION AND SEDIMENT CONTROL

15A NCAC 04B .0126 PLAN REVIEW FEE

(a) A nonrefundable plan review processing fee, in the amount stated in Paragraph ~~(b)~~ (e) of this Rule, shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 04B .0118.

(b) Each plan shall be deemed incomplete until the plan review processing fee is paid.

(c) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.

(d) No plan review processing fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph ~~(b)~~ (e) of this Rule for each additional acre (or any part thereof) disturbed.

(e) The nonrefundable plan review processing fee shall be ~~forty dollars (\$40.00)~~ fifty dollars (\$50.00) for each acre or part of any acre of disturbed land.

(f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.

Authority G.S. 113A-54; 113A-54.2.

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-.0514, .0601-.0603, .0701-.0705, amend the rules cited as 15A NCAC 07L .0101-.0102, and repeal the rules cited as 15A NCAC 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: October 2, 2001

Time: 7:00 p.m.

Location: Craven County Courthouse, 302 Broad St, New Bern, NC

Reason for Proposed Action: *The Department of Environment and Natural Resources is making a second revision to the proposed funding rules for Local Planning and Management Grants to local governments. Portions of this text were previously published in 15A NCAC 07B, in NC Register Issue 16, Volume 2 published on July 16, 2001. After receiving and reviewing comments, this text is now being moved to 15A NCAC 07L as the text was deemed more appropriate for this Rule.*

Comment Procedures: *Comments may be submitted to Kathy Vinson, Division of Coastal Management, 151-B, Hwy 24,*

Hestron Plaza II, Morehead City, NC 28557, phone 252-808-2808.

Authority G.S. 113A-112; 113A-124.

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** (\geq \$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 The~~ rules ~~in this Subchapter~~ 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 the~~ Rules ~~in this subchapter~~ 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 seeking funds to carry out local implementation and enforcement program under the Coastal Area Management Act (the minor permit program) 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 .0201 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 may make joint application for funds to carry out jointly sponsored projects.~~

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 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.

Projects

- (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 planning; port planning; sport and commercial fishing studies, etc.; 3
- (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 .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:~~

Priority Category

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 planning; port planning; sport and commercial fishing studies, etc.;	3
(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

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) 946-6484~~
- (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
 1-800-682-2632 (for NC residents only)
 (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; and
 - (2) Municipalities within coastal counties.
- (b) Two or more eligible applicants may submit a joint application for funds to carry out jointly sponsored or regional projects.
- (c) Local coastal governments may apply for the Sustainable Communities Component, as described in 15A NCAC 07L .0512.

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, Coastal Area Management Act (CAMA), state guidelines and standards implementing CAMA, local land use plans approved by the Coastal Resource Commission (CRC), and the state's federally approved 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 shall 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 shall 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 15A NCAC 07L .0512.

(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, 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 as determined during the scoping process described in 15A NCAC 07L .0505 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 addition, the Department shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories. These factors will also be considered in establishing the appropriate proportion of the grant award to total project costs:

- (1) contribution towards meeting CRC management topics;
- (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
- (3) urgency of need;
- (4) past history of implementation of CAMA planning and management activities;
- (5) feasibility of successful completion of project;

- (6) past experience with this program as well as present management and administrative capabilities;
- (7) potential applicability to other coastal area municipalities and counties; and
- (8) geographic distribution.

(d) 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.

(e) 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 (c) of this Rule will also be considered in funding decisions. Sustainable Communities projects will be funded as described in 15A NCAC 07L .0512.

(f) 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.

(g) 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 this rule. 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 15A NCAC 07L .0503 (Priorities For Funding Land Use Plans and Implementation Projects.) These lists are not intended to be exhaustive or restrictive. Local governments may apply 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 I
 - (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; and

- (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 (AECs);
 - (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 AECs as described in 15A NCAC 07H .0503, or 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); and
 - (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); and
- (G) Other coastally related management projects.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0505 SCOPING OF PLANNING NEEDS

- (a) If a local government intends to seek funding from the Department for the development or update of a CAMA Land Use Plan (LUP) a scoping meeting shall occur between the local government and the Division of Coastal Management (DCM). This meeting shall occur prior to the submission of a grant application. 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) Assuming federal and state appropriations remain at or close to the 2001-02 fiscal year appropriations, the Department intends to provide funds for local governments to update their land use plans every five years. 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 07L .0511 - Required Periodic Implementation Status Reports.
- (d) The community characteristics to be discussed during the scoping process to help determine the type of plan to be prepared 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 (DWO)

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.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0506 PUBLIC PARTICIPATION

(a) Local Governments intending to apply for Departmental funding for CAMA Land Use Plan preparation 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. Copies 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); and
- (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; and
- (4) A general outline of the meeting schedule for the group developing the land use plan, as designated in Subparagraph (1) of this Rule.

(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-112; 113A-124.

15A NCAC 07L .0507 MINIMUM LAND USE PLANNING AND FUNDING REQUIREMENTS

(a) To receive funding from the Department, counties shall, at a minimum, prepare a Core Land Use Plan, as described in 15A NCAC 07B.

(b) 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 Ocean Hazard Areas AECs must, at a minimum, prepare a Core Land Use Plan. Additionally, municipalities with non-ocean hazard areas AECs shall at a minimum prepare a Core Land Use Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only non-ocean hazard areas 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. 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, shall be considered during the scoping process described in 15A NCAC 07L .0505 when determining the final planning option to be funded.

(c) Municipalities that do not meet the minimum plan-making authority of G.S. 113A-110(c) or those with no AECs within

their planning jurisdiction shall 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 compatibility problems or unexpected growth pressures, such as the relocation of major industry to the area.

(d) 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: PRESUMED MINIMUM FUNDING FOR MUNICIPAL CAMA LAND USE PLANS

		<u>AREAS OF ENVIRONMENTAL CONCERN (AECs)</u>		
<u>POPULATION</u>	<u>GROWTH RATE*</u>	<u>OCEAN HAZARD AREAS</u>	<u>NON-OCEAN HAZARD AREAS**</u>	<u>AECs NOT PRESENT OR DO NOT MEET 113A-110 (c)***</u>
≤ 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
 No Funding

* **GROWTH RATE** (Source: Office of State Planning)

<u>High</u>	<u>= 18.4%</u>
<u>Moderate</u>	<u>> 9.2% and < 18.4%</u>
<u>Low</u>	<u>= 9.2%</u>

** Estuarine Waters, Coastal Shorelines, Public Trust Areas, and Coastal Wetlands

*** §113A-110 (c) provides that municipalities may develop individual plans if (1) the County delegates this authority to the municipality or (2) the CRC grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.

(e) Land Use Plans shall be funded as follows:

(1) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3), 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, 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 no more than three thousand dollars (\$3,000) for map preparation only.
 - (5) Local governments that choose to combine individual plans into joint or regional plans shall 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 .0508 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 rules, 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. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other 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.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0509 INTERGOVERNMENTAL

COORDINATION

- (a) Notification of Adjacent Jurisdictions (including non-CAMA areas, and if applicable, out of state areas): Each local government receiving funding for land use planning from the Department 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.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0510 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

- (a) Public Hearing Requirements For Local Governments Receiving Funding From The Department For Land Use Planning. Local adoption of the CAMA 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.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

- (a) To be eligible for future funding each local government engaged in CAMA land use planning shall complete an LUP implementation status report every two years as long as the current 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 -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-112; 113A-124.

15A NCAC 07L .0512 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM

(a) Sustainable Communities Component: Under conditions outlined in this Rule, the Department, may provide additional financial support for plans that exceed the minimum requirements of 15A NCAC 07B. This Rule 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 of selected local governments.

(b) The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast. Local governments designated as Sustainable Communities shall 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.

(c) The CRC may identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas shall be provided in the Notice of Availability of Funds and Request for Proposals.

(d) 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.

(e) The following factors shall be considered by the Department in the selection of Sustainable Communities:

- (1) merit of proposal and its relevance to CRC management topics;
- (2) proposed education and public participation throughout the life of the project;
- (3) financial and administrative capacity of the local government to implement the project;
- (4) and past history of land use plan implementation by that local government.

(f) 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 Department shall make final selections of no more than four communities per funding cycle, based on recommendations of the CRC and the Coastal Resources Advisory Council (CRAC). Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.

(g) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to the Department.

(h) Sustainable Communities shall receive the following assistance:

- (1) 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);
- (2) 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
- (3) DCM support for all grant applications to other agencies for project funding.

(i) 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 .0513 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 based on need and ability of the local government to initiate a new project. 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 .0514 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 15A NCAC 07L .0701.

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 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 Department, the local government 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, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards shall be followed.

Authority G.S. 113A-112; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10K .0101-.0103. Notice of Rule-making Proceedings was published in the Register on July 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 18, 2001

Time: 3:00 p.m.

Location: Wildlife Resources Commission Hearing Room, 512 N. Salisbury Street, 3rd floor, Rm 332, Raleigh, NC

Reason for Proposed Action: The changes in text of Rule .0101 "Course Requirements" in (a), (c) and (d) reflect a change of name for the course and for the certificate issued at the completion of the course and add clarifying language. What is currently referred to as the "Hunter Safety Course" should be renamed "Hunter Education Course" because of the diverse subject matter contained within the course. The program encompasses more than safety; it also addresses ethics, responsibility and other issues. Change of name for certificate from "Certificate of Competency" to "Certificate of Completion." Because of the length of time that an instructor has to observe

and become acquainted with each student, it is more appropriate to certify that the student has successfully completed the course than to certify that the student is competent.

Changes to Rule .0102 to remove social security number. Requiring this private information is unnecessary to purpose of program. Change to Rule .0103 to allow for certified and accredited North Carolina school teachers and persons certified as hunter education instructors from another state to teach this course upon completion of an abbreviated instructor course.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until January 2, 2002. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, Rm 334, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Fiscal Impact

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10K – HUNTER EDUCATION COURSE

15A NCAC 10K .0101 COURSE REQUIREMENTS

(a) The hunter safety course shall provide a minimum of 10 hours of instruction instruction except that a self-paced, independent study hunter education course that has been approved by the North Carolina Wildlife Resources Commission may also be administered.

(b) Of the 10 hours of instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to instruction related to the safe handling of firearms. The remaining four hours shall include instruction on hunter responsibility (ethics), wildlife conservation and wildlife management, wildlife identification, game care, specialty hunting, survival and first aid, water safety, and special concerns (alcohol and drugs, turkey hunting, trapping, all terrain vehicles, hunting dogs).

(c) The hunter safety-education course shall be administered by an instructor certified by the North Carolina Wildlife Resources Commission.

(d) The following requirements must be satisfied by the course participant in order to successfully complete a hunter safety education course and be entitled to the issuance of a Certificate of CompetencyCompletion:

- (1) attain the age of 12;
(2) complete all 10 hours of the instruction; instruction or all the material contained in the independent study course.
(3) score a minimum of 70 percent on the final examination.
(4) demonstrate safe firearm handling skills.

Any student who either intentionally or unintentionally points a firearm at another or at himself shall fail the course and must re-enroll at a later date.

Authority G.S. 113-134; 113-270.1A.

15A NCAC 10K .0102 ISSUANCE OF CERTIFICATE OF COMPLETION

(a) Upon the conclusion of a hunter ~~safety-education~~ course, the instructor shall complete a card for each participant who successfully completed the course in accordance with 15A NCAC 10K .0101 and forward the card to the North Carolina Wildlife Resources Commission for processing..

(b) Within a reasonable time after receiving the completed card referred to in Paragraph (a) of this Rule, the Commission shall issue a Certificate of ~~Competency-Completion~~ to the participant successfully completing the course. This certificate shall include:

- (1) a certification number;
- (2) the participant's name, address, social security and date of birth;
- (3) the hunter safety course instructor's name; and
- (4) course completion date.

(c) The Commission shall maintain permanent files of all successful participants in hunter ~~safety-education~~ courses who were issued a certificate of ~~competency.completion~~. Duplicate certificates may be obtained from the Commission.

Authority G.S. 113-134; 113-270.1A.

15A NCAC 10K .0103 INSTRUCTOR CERTIFICATION REQUIREMENTS

To be eligible for Hunter ~~Safety—Education~~ Instructor certification an individual must:

- (1) Be 21 years of age upon application.
- (2) Be a graduate of a Basic Hunter Education Course approved by the Wildlife Resources Commission. Approved courses must satisfy the requirements set out in 15A NCAC 10K

.0101 or be certified by a state or province that meets and or exceeds the requirements set out in 15 NCAC 10K .0101.

(3) Complete the North Carolina Hunter Education Instructors Application.

(4) Complete the 12 hour Hunter Education Instructors Course, and score 75 percent or higher on the written examination. Certified and accredited teachers of the North Carolina School System and persons who have been certified as hunter education instructors by another state may take an abbreviated course that is less than 12-hours subject to the discretion of the North Carolina Wildlife Resources Commission.

(5) Submit to a background investigation including a records check which reveals no disqualifying convictions. Disqualifying convictions are listed as follows:

- (a) a felony; or
- (b) a crime or unlawful act defined as a "Class 1" misdemeanor within the five year period prior to the date of application; or
- (c) any conviction of the game and fish law which would require a mandatory suspension and or revocation of a license as indicated in G.S. 113-276.3 within the three year period prior to the date of application.

Authority G.S. 113-134; 113-270.1A.

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 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 19 – BOARD OF ELECTROLYSIS EXAMINERS

Rule-making Agency: North Carolina Board of Electrolysis Examiners

Rule Citation: 21 NCAC 19 .0201; .0622

Effective Date: September 17, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 88A-9

Reason for Proposed Action: House Bill 436 became effective July 1, 2001 allowing us to make fee structure changes. The last change in the Board rate structure occurred at the beginning of 1992, and was sufficient for our needs for a number of years. However, due to the increase in cost of

doing business over the years, the present fee structure is inadequate to serve our needs. At present we have expenditures averaging around \$18,300 a year but we are only collecting approximately \$13,300 in receipts to support those operating expenses. In order to cover the continual shortfall of receipts, the Board has been forced to tap into its available cash balance over the last couple of years. At our present use of the case balance, the Board will be completely out of available cash balance within the next five years. We have curtailed our spending to the minimum possible, with Board members not even seeking allowable reimbursement for travel expenses to our board meetings. In order for our board to continue its mission, we desperately need to generate additional income to continue to support our basic operations.

Comment Procedures: Comments or questions should be directed to the North Carolina Board of Electrolysis Examiners, PO Box 13626, Greensboro, NC 27415, 336-574-1414, Shelton P. Dixon at 336-766-6351 or Thelma G. White at 919-596-7988.

SECTION .0200 – APPLICATION PROCEDURES

21 NCAC 19 .0201 FEES

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

(1) Application for licensure as an electrologist	\$150.00 \$100.00
(2) <u>Initial license</u>	<u>\$100.00</u>
(3) <u>Examination or reexamination</u>	<u>\$100.00</u>
(2) (4) Renewal of electrologist's license	\$100.00 <u>\$125.00</u>
(3) (5) Application for certification as an electrology instructor	\$150.00 <u>\$100.00</u>
(4) (6) Renewal of instructor's certificate	\$40.00 <u>\$ 60.00</u>
(5) (7) Application for certification as a Board approved school of electrology	\$500.00
(6) (8) Renewal of school certification	\$250.00
(9) <u>Certification of out-of-state schools</u>	<u>\$ 75.00</u>
(10) <u>Certification of out-of-state renewals</u>	<u>\$ 50.00</u>
(11) <u>Office inspection or reinspection</u>	<u>\$ 75.00</u>
(12) <u>License by reciprocity</u>	<u>\$100.00</u>
(7) (13) Late renewal charge	-\$25.00 <u>\$ 50.00</u>
(8) (14) Reinstatement of expired license	\$150.00 <u>\$250.00</u>
(15) <u>Reactivation of license</u>	<u>\$150.00</u>
(16) <u>Duplicate license</u>	<u>\$ 25.00</u>

(b) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners".

History Note: Filed as a Temporary Adoption Eff. December 1, 1991 for a period of 62 days to expire on February 1, 1992;
 Authority G.S. 88A-9;
 Eff. January 1, 1992;
Temporary Amendment Eff. September 17, 2001.

(a) The Board will certify a school in another state or jurisdiction for purposes of G.S. 88A-10 provided that:

- (1) The school applies for certification, submits the information required by G.S. 88A-19(a)(1)-(6), and meets the requirements of 21 NCAC 19 .0602, .0606, .0607, .0608, and .0609;
- (2) If the school is in a state or jurisdiction that approves electrolysis schools, the school is approved by the proper agency for that state or jurisdiction; and

SECTION .0600 – SCHOOLS

21 NCAC 19 .0622 CERTIFICATION OF SCHOOLS IN OTHER STATES OR JURISDICTIONS

(3) The school has a curriculum of at least 600 hours.

(b) A school located in another state or jurisdiction shall pay an application fee of ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00) and a yearly certification fee of ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00).

(c) The Board will revoke the certification of a school in another state or jurisdiction upon a proof that the school in a jurisdiction that licenses electrologists has lost its approval in that state.

(d) The school must agree to teach North Carolina's sanitation standards to any student who states to the school an intention of taking North Carolina's licensing examination.

History Note: Authority G.S. 88A-6; 88A-9; 88A-19; 88A-21; Eff. February 1, 1994; Temporary Amendment Eff. September 17, 2001.

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Rule-making Agency: Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

Rule Citation: 21 NCAC 50 .0307, .0309, .0409, .0501, .0508, .0511, .1101-.1102, .1104

Effective Date: August 31, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 87-18

Reason for Proposed Action:

21 NCAC 50 .0307 – G.S. 87-22.1 was amended by the 2001 General Assembly to eliminate refund of examination fees. The temporary amendment conforms the rule to the amended statute.

21 NCAC 50 .0309 – S.L. 2001, c. 270 amended the application and examination fee set forth in G.S. 87-22.1 and also eliminated the separate licensing status for persons from towns of less than 10,000 population. The temporary rule amends existing rules to conform to the amended statutes.

21 NCAC 50 .0409 – The General Assembly rewrote the fee provisions of G.S. 87-22 and G.S. 87-22.1. The temporary rule is amended to conform to statutory changes.

21 NCAC 50 .0501 – G.S. 87-21 was rewritten by S.L. 2001, c. 270. This Rule is amended to conform to statutory changes.

21 NCAC 50 .0508 – G.S. 87-21(a)(3) was amended by the 2001 General Assembly to exempt certain Heating Group 2 systems from the license requirements. The temporary amendment is adopted to conform to the law now in effect.

21 NCAC 50 .0511 – G.S. 87-21(b)(2) was amended by the 2001 General Assembly to require gas piping to be installed

by a licensee regardless whether the piping supplies a stove, furnace, hot water heater, fire logs or other appliance. The temporary rule is adopted to conform the rule to the statute now in effect.

21 NCAC 50 .1101 – Examination fees to applicants were mandated by S.L. 2001, c. 270, s.4. The temporary rule is adopted to match the legislative mandate, already in effect.

21 NCAC 50 .1102 – Annual fees to licensees were mandated by S.L. 2001, c. 270, s. 4. The temporary rule is adopted to match the legislative mandate, already in effect.

21 NCAC 50 .1104 – The General Assembly amended G.S. 87-22 effective June 28, 2001 to require a fee of twenty-five dollars (\$25.00) of persons who do not renew license by January 31 of each year. The rule is being amended to match the legislative mandate. The temporary rule procedure is used to eliminate confusion with respect to compliance with legislative mandate.

Comment Procedures: Comments may be presented in writing to the Board by October 31, 2001. Comments should be mailed to Rulemaking Coordinator, State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 3801 Wake Forest Road, Suite 201, Raleigh, NC 27609.

SECTION .0300 – EXAMINATIONS

21 NCAC 50 .0307 REFUND OF DEPOSIT

~~(a) An~~ The application and examination fee for ~~a regular an~~ examination will not be ~~refunded~~ refunded, ~~unless the applicant notifies the executive secretary, either orally or in writing, at least three days before the examination that the applicant will be unable to attend the examination. To be effective, an oral notification must be confirmed in writing within three days.~~

~~(b) In the event an applicant fails to pass the examination, fails to appear for examination, or abandons an examination, the license fee deposit will be refunded.~~

History Note: Authority G.S. 87-18; 87-21(b); 87-22; 87-22.1;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. May 1, 1989;

Temporary Amendment Eff. August 31, 2001.

21 NCAC 50 .0309 EXPANDING SCOPE OF LICENSE

~~(a) Any licensee holding a license as an individual, or a licensee whose name appears on the certificate of license issued in the name of a corporation, partnership, or business that has a trade name, may be examined for the purpose of expansion of his license qualifications without deposit of an additional annual license fee upon payment of the required application and examination fee. fee except that licensees seeking to add qualification as a fire sprinkler contractor must pay the license fee for that qualification.~~

~~(b) A current license limited to cities or towns of less than 10,000 population may be expanded to statewide in scope~~

~~without examination, upon payment of the license fee as prescribed by Rule .1103 of this Chapter.~~

History Note: Authority G.S. 87-18; 87-21(b); 87-25;
 Eff. February 1, 1976;
 Readopted Eff. September 29, 1977;
 Amended Eff. July 1, 1991; May 1, 1989;
Temporary Amendment Eff. August 31, 2001.

SECTION .0400 – GENERAL PROCEDURES

21 NCAC 50 .0409 REINSTATEMENT OF EXPIRED LICENSE

A license which expires may be reinstated within three years of the date of expiration upon written ~~request request. Upon presentation of satisfactory evidence that the licensee has not engaged in the business of either plumbing, heating or fire sprinkler contracting since the expiration of his license, payment of the license fee for the current year only will be required. In the absence of such evidence, the license may be reinstated within three years of the date of expiration and~~ upon payment of the current license fee, the license fee for the ~~year for which such evidence is omitted and all subsequent years, unpaid prior years~~ together with the ~~penalty processing fee~~ imposed by G.S. 87-22.

History Note: Authority G.S. 87-18; 87-22;
 Eff. February 1, 1976;
 Readopted Eff. September 29, 1977;
 Amended Eff. April 1, 1991; May 1, 1989; August 1, 1984;
 August 1, 1982;
Temporary Amendment Eff. August 31, 2001.

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

21 NCAC 50 .0501 AIR CONDITIONING FURTHER DEFINED

(a) Heating Group 2 A An air conditioning system is an aggregation or assemblage of objects united by some form of interaction or interdependence, or a group of single or multiple units so combined as to form an integral whole, that requires a total of more than 15 tons of mechanical refrigeration to function or operate, which produces conditioned air by the raising or lowering of temperature for comfort heating or cooling, and requires air distribution ducts. Multiple units serving interconnected space and aggregating more than 15 tons are included in the foregoing whether or not separately ducted or controlled.

(b) All heating systems utilizing ductwork and located in single family residences, and not requiring a Heating Group one license requires a Heating Group 3 license.

History Note: Authority G.S. 87-18; 87-21(a)(3);
 Eff. February 1, 1976;
 Readopted Eff. September 29, 1977;
 Amended Eff. August 1, 2000; May 1, 1989;
Temporary Amendment Eff. August 31, 2001.

21 NCAC 50 .0508 HEATING: LICENSE

REQUIRED

(a) A license in heating, group No. 3 is required for the installation or replacement of a furnace, ductwork or condenser in a heating, group No. 3 system.

(b) A license in heating, group No. 3 is required to install or replace a self-contained fireplace unit if the unit utilizes ducts or a blower to distribute air to areas not immediately adjacent to the fireplace itself.

(c) A license in heating, group No. 3 is required when air conditioning of less than 15 tons is added to an already installed heating, group No. 3 system, provided the existing heating system is altered or modified, or there are changes in the duct or control system.

(d) A Heating Group No. 2 license is required for the installation or replacement of equipment or ductwork in a Heating Group No. 2 ~~system- system, unless exempted by G.S. 87-21(a)(3).~~

History Note: Authority G.S. 87-18; 87-21(a)(3);
 87-21(a)(5); 87-21(c);
 Eff. February 1, 1976;
 Readopted Eff. September 29, 1977;
 Amended Eff. August 1, 2000; May 1, 1989; August 1, 1982;
Temporary Amendment Eff. August 31, 2001.

21 NCAC 50 .0511 FUEL PIPING

The contracting or installation of fuel piping extending from an approved fuel source at or near the premises, to a point within the premises, requires either Plumbing, Heating Group 1, Heating Group 2, Heating Group 3, or Fuel Piping ~~license~~ license, if such piping is or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or if, by the installation of such piping, the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a) may be altered or affected, regardless the nature of the system, equipment or appliance served. The term fuel refers to flammable gas, flammable liquefied gas, or flammable liquid as those terms are defined in Volume V of the North Carolina Building Code, and to combustible liquid so defined when used in a non-residential application. This provision does not alter the restriction of Class II license to single family detached residential dwellings.

History Note: Authority 87-18; 87-21;
 Eff. July 1, 1998;
Temporary Amendment Eff. August 31, 2001.

SECTION .1100 – FEES

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(c) ~~An application for license~~ License by examination requires ~~a an application fee of twenty dollars (\$20.00) and an examination fee of sixty dollars (\$60.00), which is nonrefundable. fee of fifty dollars (\$50.00) for the~~

~~examination and a fee for issuance of license as set forth in 21 NCAC 50 .1102 or this Rule. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination.~~

History Note: Filed as a Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990; Authority G.S. 87-18; 87-22.1; 87-22; 87-26; Eff. May 1, 1989; Amended Eff. August 1, 2000; November 1, 1993; March 1, 1990; Temporary Amendment Eff. August 31, 2001.

21 NCAC 50 .1102 LICENSE FEES

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is ~~seventy-five dollars (\$75.00).~~ one hundred dollars (\$100.00).

~~(b) The annual license fee for a license limited in territory to cities or towns less than 10,000 population forty-five dollars (\$45.00).~~

~~(b)(e)~~ The annual license fee for a licensed individual who is not actively engaged in business requiring license by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is fifteen dollars (\$15.00).

~~(c)(d)~~ The initial application fee for license as a fire sprinkler contractor is seventy-five dollars (\$75.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is two-hundred seventy-five dollars (\$275.00).

~~(d)(e)~~ The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

History Note: Filed as a Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990; Authority G.S. 87-18; 87-21; 87-22; Eff. May 1, 1989; Amended Eff. November 1, 1994; July 1, 1991; March 1, 1990; Temporary Amendment Eff. September 15, 1997; Temporary Amendment Eff. August 31, 2001.

21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS

The Board charges the following fees:

- ~~(1)~~ copy of the Register of Licensees ~~\$ 4.00~~ each
- ~~(1)(2)~~ copies of license \$15.00
- ~~(2)(3)~~ abstract of license record \$15.00
- ~~(3)(4)~~ processing fee for returned checks maximum allowed by law
- ~~(4)(5)~~ copy of Board rules \$10.00

(5) processing fee for late renewal \$25.00

History Note: Authority G.S. 25-3-512; 87-18; 150B-19; Eff. September 1, 1994; Amended Eff. July 1, 1998; November 1, 1994; Temporary Amendment Eff. August 31, 2001.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Rule-making Agency: NC State Board of Community Colleges

Rule Citation: 23 NCAC 02C .0305

Effective Date: August 22, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 115D-1; 115D-1.1; 115D-20; S.L. 1995, c. 625

Reason for Proposed Action: The 2001 session of the General Assembly amended G.S. 115D with the addition of Section 115D-1.1 - Discretion in Admission. This section became effective upon becoming law. It allows students less than 16 who are intellectually gifted and mature to enroll in community colleges. The State Board of Community Colleges is required to adopt rules to implement this provision. Since this provision was effective upon becoming law, we need this rule in effect immediately so that the community colleges will have uniform criteria to enroll students in the fall semester. House Bill 1246 was ratified by the General Assembly on July 18th and signed by the Governor on July 28th. The SBCC initially adopted Rule 02C .0305 as amended as a temporary rule on July 20, 2001. Based on later discussions with community college administrators, the temporary rule was revised and readopted by the SBCC on August 17, 2001 to restrict application of the temporary rule to persons less than 16 years old on a space available basis.

Comment Procedures: Written comments may be sent to Clay T. Hines, North Carolina Community College System, 5004 Mail Service Center, Raleigh, NC 27699-5004.

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02C – COLLEGES: ORGANIZATIONS AND OPERATIONS

SECTION .0300 – STUDENTS

23 NCAC 02C .0305 EDUCATION SERVICES FOR MINORS

- (a) The State Board shall encourage individuals to complete high school before seeking admission to a college.
- (b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an

appropriate program at a college if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of such student to the program is approved by the college. This requirement may be waived if the student has been out of school at least six months and the application is supported by a notarized petition of the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.

(c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to any curriculum or continuing education course, appropriate courses, except adult high school, concurrently under the following conditions:

- (1) Upon recommendation of the chief administrative school officer and approval of the president of the college;
- (2) Upon approval of the student's program by the principal-Chief Administrative School Officer of the school and the president of the college; and
- (3) Upon certification by the principal-Chief Administrative School Officer that the student is taking the equivalent of one-half of a full-time schedule and is making appropriate progress toward graduation.

(d) High school students, taking courses pursuant to Paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any semester on a space-available basis to any curriculum or continuing education course. Once admitted, they shall be treated the same as all other students.

(e) Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to qualified high school students. College credits shall be awarded to those high school students upon successful completion of the courses. Cooperative programs shall be approved, prior to implementation, by the State Board or its designee.

(f) Students less than 16 years old who are mature enough to function well in an adult education setting and are intellectually gifted as evidenced by a score in the range between the 92nd percentile and the 99th percentile on an aptitude and an achievement test selected from a list of tests approved by the System Office may be admitted to community colleges. The student shall be ranked by an official of the student's school in the top 10 percent on the following behavioral characteristics: mature, observant, inquisitive, persistent, innovative, analytical, adaptability, leadership, desire to achieve, self-confidence and communications skills. Students less than 16 years old shall not displace adults but may be admitted any semester on a space-available basis to any curriculum course.

~~(f)~~(g) Except as authorized by G.S. 115D-20(4), colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

~~(g)~~(h) A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer period. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the college or high school.

~~(h)~~(i) At the request of the director of a training school having custody of juveniles committed to the Division of Youth Services, Department of Human Resources Department of Juvenile Justice and Delinquency Prevention, a college may make available to such juveniles any course offered by that college if they meet the course admission requirements. The director's request shall include the director's approval for each juvenile to enroll in the course. Courses made available to such juveniles shall follow the approval process for immured groups as set forth in 23 NCAC 02E .0403.

History Note: Authority G.S. 115D-1; 115D-5; 115D-20; S.L. 1995, c. 625; Eff. January 1, 1987; Amended Eff. September 1, 1993; Temporary Amendment Eff. June 1, 1997; Amended Eff. July 1, 1998; Temporary Amendment Eff. August 22, 2001.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of August 16, 2001 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10	NCAC	45G	.0306*	15:08 NCR
12	NCAC	09B	.0101*	not required (G.S. 150B-21.5) Eff. September 1, 2001
15A	NCAC	10B	.0115	15:08 NCR
16	NCAC	06D	.0305*	15:20 NCR, Eff. September 1, 2001
16	NCAC	06G	.0305*	15:20 NCR, Eff. September 1, 2001
19A	NCAC	03J	.0101	15:23 NCR
19A	NCAC	03J	.0102*	15:23 NCR
19A	NCAC	03J	.0203-.0204	15:23 NCR
19A	NCAC	03J	.0206*	15:23 NCR
19A	NCAC	03J	.0207	15:23 NCR
19A	NCAC	03J	.0305	15:23 NCR
19A	NCAC	03J	.0308	15:23 NCR
19A	NCAC	03J	.0401-.0402*	15:23 NCR
19A	NCAC	03J	.0503*	15:23 NCR
19A	NCAC	03J	.0504	15:23 NCR
19A	NCAC	03J	.0507	15:23 NCR
19A	NCAC	03J	.0601-.0604	15:23 NCR
19A	NCAC	03J	.0703	15:23 NCR
19A	NCAC	03J	.0802	15:23 NCR
21	NCAC	16A	.0104*	not required (G.S. 150B-21.5(a)(4)), Eff. September 1, 2001
21	NCAC	48A	.0105*	15:18 NCR
21	NCAC	48B	.0101*	15:18 NCR
21	NCAC	48C	.0102*	15:18 NCR
21	NCAC	48E	.0110*	15:18 NCR
21	NCAC	48G	.0204*	15:18 NCR
21	NCAC	48G	.0401*	15:18 NCR
21	NCAC	48G	.0405*	15:18 NCR
21	NCAC	48G	.0504*	15:18 NCR
21	NCAC	48G	.0602*	15:18 NCR
25	NCAC	01B	.0437*	15:22 NCR

**TITLE 10 – DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**10 NCAC 45G .0306 SUPPLYING OF METHADONE
IN TREATMENT PROGRAMS BY RN**

(a) Methadone or other medications approved for use in narcotic addiction treatment by the Food and Drug Administration, and under the North Carolina Controlled Substances Act, may be supplied to a bona fide patient of a methadone treatment program.

(b) Methadone may be supplied by either a registered nurse or a licensed practical nurse employed by that program, provided the methadone is supplied pursuant to the order of the program's medical director, who is a licensed physician registered with the

Federal Drug Enforcement Administration to dispense controlled substances in the applicable schedule.

(c) The program's medical director shall countersign or sign in the medical record of the program all orders for methadone or other medications approved for use in narcotic addiction treatment by the Food and Drug Administration and under the North Carolina Controlled Substances Act within 72 hours of the initiation of the order.

(d) For purposes of this Rule, supplying shall not include prescribing or compounding.

*History Note: Authority G.S. 90-100; 143B-147(a)(5);
Eff. June 30, 1978;
Amended Eff. May 1, 1990;*

*Temporary Amendment Eff. November 1, 2000;
Amended Eff. August 1, 2002.*

TITLE 12 - DEPARTMENT OF JUSTICE

**12 NCAC 09B .0101 MINIMUM STANDARDS FOR
CRIMINAL JUSTICE OFFICERS**

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation;
- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
 - (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 59 F.R. 29916(1994), are 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;
 - (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;

- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives, to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (8) notify the Standards Division of all criminal offenses which the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs). G.S. 20-28(b) (driving while license permanently revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). 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 the 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. 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 applications for certification. 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 charges and final dispositions 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.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. September 1, 2001; April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990.

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

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

- (a) The LEA shall include each student's end-of-course test results in the student's permanent records and high school transcript.
- (b) The LEA shall give each end-of-course test within a 110-minute period within the final ten days of the course.
- (c) Starting with the 2001-2002 school year LEAs shall use results from all multiple-choice EOC tests (English I, Algebra I, Biology, US History, Economic Legal and Political Systems, Algebra II, Chemistry, Geometry, Physics, and Physical Science) as at least 25 percent of the student's final grade for each respective course. LEAs shall adopt policies regarding the use of EOC test results in assigning final grades.
- (d) Students who are enrolled for credit in courses in which end-of-course tests are required shall take the appropriate end-of-course test.
- (e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course tests.
- (f) Each student shall take the appropriate end-of-course test the first time the student takes the course even if the course is an honors or advanced placement course.
- (g) Students shall take the appropriate end-of-course test at the end of the course regardless of the grade level in which the course is offered.
- (h) Students who are identified as failing a course for which an end-of-course test is required shall take the appropriate end-of-course test.
- (i) Effective with the 1999-2000 school year students may drop a course with an end-of-course test within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.

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

16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12

(a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:

- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
- (2) "b₀" means the state average rate of growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The constant values for b₀ shall be as follows:
 - (A) for reading:
 - (i) 6.2 for grade 3;
 - (ii) 5.2 for grade 4;
 - (iii) 4.6 for grade 5;
 - (iv) 3.0 for grade 6;
 - (v) 3.3 for grade 7;
 - (vi) 2.7 for grade 8; and
 - (vii) 2.3 for grade 10.
 - (B) for mathematics:
 - (i) 12.8 for grade 3;
 - (ii) 7.3 for grade 4;
 - (iii) 7.4 for grade 5;
 - (iv) 7.1 for grade 6;
 - (v) 6.5 for grade 7;
 - (vi) 4.9 for grade 8; and
 - (vii) 2.3 for grade 10.
 - (C) for EOC courses:
 - (i) 60.4 for Algebra I;
 - (ii) 55.2 for Biology;
 - (iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
 - (iv) 53.3 for English I;
 - (v) 56.0 for U.S. History;
 - (vi) 59.3 for Algebra II;
 - (vii) 56.9 for Chemistry;
 - (viii) 58.5 for Geometry;
 - (ix) 53.8 for Physical Science; and
 - (x) 56.1 for Physics.
- (3) "b₁" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b₁ shall be as follows:
 - (A) for reading:
 - (i) 0.46 for grade 3;
 - (ii) 0.22 for grades 4 through 8; and
 - (iii) 0.24 for grade 8 to 10.
 - (B) for mathematics:
 - (i) 0.30 for grade 3;
 - (ii) 0.26 for grades 4 through 8; and
 - (iii) 0.28 for grade 8 to 10.
- (4) "b₂" means the value used to estimate regression to the mean in the regression

- formula for grades 3 through 8 and 10. The values for b_2 shall as follows:
- (A) for reading:
 - (i) -0.91 for grade 3;
 - (ii) -0.60 for grades 4 through 8; and
 - (iii) -0.52 for grades 8 to 10.
 - (B) for mathematics:
 - (i) -0.47 for grade 3;
 - (ii) -0.58 for grades 4 through 8; and
 - (iii) -0.43 for grades 8 to 10.
- (5) " b_{IRP} " means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:
- (A) 0.71 for Biology;
 - (B) 0.88 for ELPS;
 - (C) 1.01 for English I;
 - (D) 0.68 for U.S. History;
 - (E) 0.43 for Algebra II;
 - (F) 0.42 for Geometry; and
 - (G) 0.58 for Physical Science.
- (6) " b_{IMP} " means the value used to estimate the effect, as determined by analysis of empirical data, of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:
- (A) 0.88 for Algebra I;
 - (B) 0.318 for Biology;
 - (C) 0.88 for ELPS;
 - (D) 0.15 for U.S. History;
 - (E) 0.39 for Geometry;
 - (F) 0.34 for Physical Science; and
 - (G) 0.58 for Physics.
- (7) " b_{IAP} " means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:
- (A) 0.89 for Algebra II;
 - (B) 0.18 for Chemistry; and
 - (C) 0.43 for Geometry.
- (8) " b_{IBP} " means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b_{IBP} shall be 0.51 for Chemistry and 0.66 for Physics.
- (9) " b_{IEP} " means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b_{IEP} shall be 0.27 for Chemistry and 0.32 for Physics.
- (10) "Compliance commission" means that group of persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.
- (11) "Composite score" means a summary of student performance in a school. A composite score shall include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, English II (Writing), Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are administered, as well as student performance on the NC High School Comprehensive Test, the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.
- (12) "Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.
- (13) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.
- (14) "Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).
- (15) "Growth standards" means and includes collectively all the factors defined in this Paragraph that are used in the calculations described in Paragraph (j) of this Rule to determine a school's growth/gain composite.
- (16) "IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average mathematics scale score from the local school average mathematics scale score. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.
- (17) "ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average (the baseline) on data from the 1994-95 school year.

- (18) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the average Biology scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools (the baseline) on data from the 1998-99 school year.
- (23) "Performance Composite" is the percent of scores of students in a school that are at or above Level III, are at a passing level on the Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 06D .0503(c), and at proficiency level or above on the Alternate Assessment Portfolio to the extent that they apply in a given school. The SBE shall:
- (A) determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8 and 10, or on all EOC tests administered as part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test (students in eighth grade only); add the number of scores that are proficient or above on the Alternative Assessment Portfolio; and use the total of these numbers as the numerator;
- (B) determine the number of student scores in reading, mathematics, or writing, across grades 3 through 8 and 10; or on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the Alternate Assessment Portfolio; and use the total of these numbers as the denominator; and
- (C) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator to compute the performance composite.
- (24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.
- (25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent (5%).
- (26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.
- (27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.
- (28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation baseline values used for the growth standards are as follow:
- (A) for reading in grades K-8:
- (i) 1.7 for grade 3;
- (ii) 1.3 for grade 4;
- (iii) 1.2 for grade 5;
- (iv) 1.3 for grade 6;
- (v) 1.1 for grade 7;
- (vi) 1.2 for grade 8; and
- (vii) 1.6 for grade 10.
- (B) for mathematics in grades K-8:
- (i) 2.6 for grade 3;
- (ii) 2.1 for grade 4;
- (iii) 2.0 for grade 5;
- (iv) 2.1 for grade 6;

- (v) 2.0 for grade 7;
- (vi) 1.7 for grade 8; and
- (vii) 2.0 for grade 10.
- (C) for courses with an EOC test:
 - (i) 3.3 for Algebra I;
 - (ii) 2.6 for Biology;
 - (iii) 3.1 for ELPS;
 - (iv) 1.8 for English I;
 - (v) 7.6 for English II (expected gain);
 - (vi) 7.5 for English II (exemplary gain);
 - (vii) 2.2 for U.S. History;
 - (viii) 2.9 for Algebra II;
 - (ix) 2.5 for Chemistry;
 - (x) 2.5 for Geometry;
 - (xi) 2.5 for Physical Science;
 - (xii) 3.3 for Physics;
 - (xiii) 10.0 for College Prep/College Tech Prep (CP/CTP);
 - (xiv) 12.8 for Competency Passing Rate; and
 - (xv) Dropout Rate will be determined based upon data from the 2000-01 school year.

(29) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.

(b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.

- (1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth = $b_0 + (b_1 \times \text{ITP}) + (b_2 \times \text{IRM})$."
- (2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.

- (A) "Predicted Algebra I Mean Score = $b_0 + (b_{\text{IMP}} \times \text{IMP})$," where $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.
- (B) "Predicted Biology Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IMP}}^2 \times \text{IMP}^2) + (b_{\text{IMP}}^3 \times \text{IMP}^3)$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.
- (C) "Predicted ELPS Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency.
- (D) "Predicted English I Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency.
- (E) "Predicted U.S. History Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP})$ "

$(b_{\text{IMP}}^2 \times \text{IMP}^2)$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.

(F) "Predicted Algebra II Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IAP}} \times \text{IAP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra Proficiency.

(G) "Predicted Chemistry Mean Score = $b_0 + (b_{\text{IAP}} \times \text{IAP}) + (b_{\text{IBP}} \times \text{IBP}) + (b_{\text{IEP}} \times \text{IEP})$," where $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra Proficiency, $(b_{\text{IBP}} \times \text{IBP})$ is the impact of Biology Proficiency, and $(b_{\text{IEP}} \times \text{IEP})$ is the impact of English I Proficiency.

(H) "Predicted Geometry Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IAP}} \times \text{IAP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency, $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency, and $(b_{\text{IAP}} \times \text{IAP})$ is the impact of Algebra I Proficiency.

(I) "Predicted Physical Science Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency.

(J) "Predicted Physics Mean Score = $b_0 + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IBP}} \times \text{IBP}) + (b_{\text{IEP}} \times \text{IEP})$," where $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency, $(b_{\text{IBP}} \times \text{IBP})$ is the impact of Biology Proficiency, and $(b_{\text{IEP}} \times \text{IEP})$ is the impact of English I Proficiency.

(c) Schools shall be accountable for student performance and achievement. This Paragraph describes the conditions under which an eligible student's scores shall be included in the accountability measures for the school that the student attended at the time of testing.

(1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:

- (A) have a pre-test score and a post-test score in reading and mathematics. For students in grade three the pre-test score refers to the score from the third-grade end-of-grade test administered in the Fall of the third grade and the post-test score refers to the score from the end-of-grade test administered in the Spring of the third grade. For students in grades four through eight, the pre-test score refers to score from the previous year's end-of-grade test and the post-test score refers to the score from the current year's end-of-grade test. Students in

grades four or seven with writing scores shall also be included; and

(B) have been in membership more than one-half of the instructional period (91 of 180 days).

(2) To be included in accountability measures for Algebra I, Algebra II, Biology, Chemistry, Economic Legal and Political Systems, English I, Geometry, Physical Science, Physics, or U.S. History, a student must have scores for all tests used in the prediction formula.

(3) Students shall be included in the performance composite without reference to pretest scores or length of membership.

(d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

(e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.

(f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests and the NC Comprehensive Test. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.

(g) All students who are following the standard course of study and who are not eligible for exclusion as set out in paragraph (h) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed by a school employee designated by the principal an answer document (except in writing). The answer sheet for an excluded student shall contain only student identification information and the reason the student was excluded. Both the school and the LEA shall maintain records on the exclusions of students from testing. The Department may audit these records.

(h) Individual students may be excluded from SBE-adopted tests as follows:

(1) Limited English proficient students may be excluded for one year beginning with the time of enrollment in the LEA if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. 12 months after a limited English proficient student has enrolled in the LEA, the student must be reassessed on the same language proficiency test that was used as a part of the

identification of the student for inclusion in the limited English proficiency program in that LEA. A student assessed as novice/low to intermediate/low after 12 months may be excluded for an additional 12 months. A student assessed as intermediate/high or above must participate in the state testing program. After two years from the time of initial enrollment in the LEA, all limited English proficiency students must participate in the state testing program. LEAs shall report results of the initial language proficiency test and the results on the same test 12 months after enrollment in the LEA to the Department. LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in other subject areas.

(2) All students with disabilities including those identified under Section 504 shall be included in the statewide testing program through the use of state tests with appropriate accommodations or through the use of other state assessments designed for these students. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using another state assessment designed for that student's disability.

(i) Students in grades 3-8 and 10 with IEPs and serious cognitive deficits and whose program of study focuses on functional/life skills shall participate in the North Carolina Alternate Assessment Portfolio as an alternative.

(j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:

(1) Calculate the indices for writing in grades 4 and 7 (separately) for the three most current years for achievement levels as defined by 16 NCAC 06D .0501(4) as follows:

- (A) Multiply the percent of students at level IV by 3.
- (B) Multiply the percent of students at level III by 2.
- (C) Determine the percent of students at level II.
- (D) Add the three numbers together and divide by three.
- (E) Subtract the index of two years ago from the most recent index, then subtract the index for the prior school year from the most recent index. Determine which figure is greater and multiply by one half.
- (F) Subtract 0.1 from the difference.
- (G) Divide by the associated standard deviation. The result is the standard gain for writing.

(2) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected

- standard gain and the exemplary standard gain for EOC courses.
- (3) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students identified by Paragraph (c)(1) of this Rule and determine the actual EOC mean for EOC tests using data on the groups of students identified by Paragraph (c)(2) of this Rule from one point in time to another point in time.
 - (4) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.
 - (5) Divide the differences for reading, writing, and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
 - (6) The SBE shall calculate a school's gain composite in college prep/college tech prep using the following process:
 - (A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
 - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study.
 - (C) Subtract the baseline from the current year's percentage.
 - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.
 - (7) The SBE shall calculate a school's expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the 8th-grade end-of-grade test.
 - (A) Subtract the grade 8 rate from the grade 10 rate.
 - (B) Subtract 0.1.
 - (C) Divide by the standard deviation. The result is the standard gain in competency passing rate.
 - (8) Determine the composite expected gain in English II for a high school as follows:
 - (A) Compute the English II index for the current year and for the two previous years by multiplying the percentage of students at level IV by 3, the percentage of students at level III by 2, and the percentage of students at level II by 1. Add the products and divide by 3 to obtain the EOC index.
 - (B) Compute the EOC indices for the same three years.
 - (C) Determine the baseline by adding Year One and Year Two and dividing by 2.
 - (D) Subtract the baseline from the current year's index.
 - (E) Subtract 0.1 from the difference.
 - (F) Divide the result by the associated standard deviation of change. This is the standard expected gain for English II.
 - (9) Multiply the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, writing at grades 4 and 7, gain in competency passing rate, gain in college prep/college tech prep, change in dropout rate, and English II gain by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.
 - (10) The SBE shall compute exemplary growth using the exemplary growth standard ($b_o \times 1.10$) in the accountability formula for grades 3 through 8 and 8 to 10 in reading and mathematics, and ($b_o \times 1.03$) for predicted EOC means. There is no exemplary standard for writing, competency passing rate or college prep/college tech prep gain.
 - (11) To determine the composite score for exemplary standards:
 - (A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8 and 10; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test. In writing, one tenth (.1) must be subtracted from the greater of the two writing differences.
 - (B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.
 - (C) Multiply the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, expected standard gain in writing at grades 4 and 7, Competency Passing

Rate, Dropout Rate, and for College Prep/College Tech Prep, and exemplary standard gain in English II by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the exemplary growth standard.

(k) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint an appeals committee composed of a panel selected from the compliance commission to review written appeals from schools. The school officials must clearly document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

History Note: Authority G.S. 115C-12(9)c4.; Eff. January 1, 1998; Amended Eff. December 1, 2000; Temporary Amendment Eff. March 5, 2001; Amended Eff. September 1, 2001.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 03J .0102 DEFINITIONS

For the purpose of this Subchapter, the following definitions shall apply:

- (1) "Actively Enrolled" means any student who is neither a graduate nor has failed to complete his or her course.
- (2) "Base Period" means a six-month period from January 1 through June 30 or from July 1 through December 31.
- (3) "Constructive Notice" means a student's notice of intention to withdraw from a course by failing to attend residence instructional facilities for a period of three consecutive days on which that class meets.
- (4) "Cooling off Period" means five days from the time the student is given or mailed a signed copy of his completed contract.
- (5) "Enrollment contract" means any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school.
- (6) "Fail to Complete" means any student who does not fully complete the required 160 hours of the lessons or classes required by the Division as constituting the full course of study and who cancels by any of the methods prescribed.

- (7) "Field Training" means off-road training in and around the truck. Refer to Rule .0306(2)(b), (c), (e), and (i) of Section .0300.
- (8) "Foreign Commercial Driver Training School" means an enterprise located outside North Carolina which solicits, advertises, or offers commercial motor vehicle driver training to residents of North Carolina.
- (9) "General Job or Earnings Claim" means any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.
- (10) "Graduate" means any student who fully completes the required 160 hours of the lessons or classes required by the Division and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.
- (11) "Job or Earnings Claim" means any general or specific job or earnings claim.
- (12) "Media Advertisement" means any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are available from a school or distributed by its sales representatives.
- (13) "Most Recent Base Period" means the latest base period.
- (14) "New Course" means any course which has a substantially different course content and occupational objective from any course previously offered by the school and which has been offered for a period of time less than six months.
- (15) "Prospective Student" means any person who seeks to enroll in a course.
- (16) "Recruiter/Salesman" means any person who is employed by a commercial truck driver training school, directly or indirectly, to recruit students for a school. This definition includes persons who are employed by another person who is a direct employee or broker for a school.
- (17) "Refresher Course" means a minimum 80-hour course which offers classroom and behind the wheel instruction for drivers who have previously held a CDL, Class A, or Chauffeurs License.
- (18) "Seminar" means a course of 40 hours or less offering educational materials and classroom instruction only in order to prepare a student for an examination given by the State for a driver's license.

- (19) "Specific Job or Earnings Claim" means any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.
- (20) "Student" means any person who has signed an enrollment contract with a school and not canceled that contract before the cooling-off-period, specified in this Rule, has ended.
- (21) "Total Contract Price" means the total price for the enrollment contract, including charges for registration, ancillary services, and any finance charges.

History Note: Authority G.S. 20-320; 20-321; Eff. May 1, 1987; Amended Eff. August 1, 2002; August 1, 1998; January 1, 1994; February 1, 1991.

19A NCAC 03J .0206 BRANCH OFFICES

Any school desiring to open a branch shall make application for such branch on forms furnished by the Division in the same manner and to the same extent as for an original license. A commercial driver training school may operate a branch office anywhere in the state provided:

- (1) The branch meets all the requirements of the principal place of business.
- (2) The branch is identified as a "branch office" by a permanent sign which indicates the location of the principal place of business and which is visible to the general public.

History Note: Authority G.S. 20-321; 20-324; 20-325; Eff. May 1, 1987; Amended Eff. August 1, 2002.

19A NCAC 03J .0401 VEHICLE EQUIPMENT

(a) Behind-the-wheel instruction of students in commercial driver training schools shall be conducted in motor vehicles owned or leased by the school. All vehicles used for the purpose of demonstration and practice shall:

- (1) If used for field instruction be equipped with:
 - (A) seatbelts as required by Federal and State law;
 - (B) an outside rearview mirror mounted on the right side of the vehicle;
 - (C) a heater, defroster, turn signals and brake lights; and
 - (D) all other equipment required by G.S. 20 except that a working speedometer is not required.
- (2) Bear conspicuously displayed signs with the words "Student Driver" in letters not less than six inches in height on both the front and rear of the vehicle and also bear conspicuously displayed signs with the name and location of the school in letters not less than three inches

- in height on both sides of the power unit and on the back of the trailer.
- (3) Meet the safety requirements for commercial motor vehicles as found in CFR 49 Parts 390-397.
- (b) No school equipment shall be used to transport property or persons for compensation, other than a properly enrolled student, except when school equipment is used by certified third party examiners in accordance with the requirements of 19A NCAC 03B .0700 of these Rules, while conducting third party testing, and the school may charge a reasonable fee for the use of the school's equipment.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328; Eff. May 1, 1987; Amended Eff. August 1, 2002; August 1, 1994; January 1, 1994; May 1, 1990.

19A NCAC 03J .0402 REGISTRATION: INSURANCE: INSPECTION

(a) Each vehicle used by the school on the highway shall be titled and registered as required by G.S. 20 and bear a current inspection certificate. Each yard vehicle used by the school shall be titled as required by G.S. 20.

(b) Each vehicle used by the school shall be insured by a company licensed to do business in North Carolina against liability in the amount of at least twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident, fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident, and one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident. This insurance coverage shall be secured on an annual basis. In the event coverage for any vehicle used for driver instruction or training shall not be renewed, the school shall give written notice to the Division at least 10 days prior to the expiration date of the coverage. A certificate of insurance coverage shall be filed by the insurance underwriter with the Division. Cancellation shall be accomplished upon 15 days prior written notice to the Division by the insurance underwriter.

(c) Each vehicle used by a school shall be listed and inspected in the manner prescribed in CFR 49 Part 396. In addition, each vehicle shall be inspected and approved by a representative of the Division before it is used. Each vehicle shall be inspected and approved by a representative of the Division annually and at any other reasonable time as indicated by the circumstances.

(d) Vehicles used for off-road field training must be titled, but are not required to meet North Carolina registration requirements.

History Note: Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-327; Eff. May 1, 1987; Amended Eff. August 1, 2002.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16A .0104 LOCATION

- (a) The Board maintains its offices at 15100 Weston Parkway, Suite 101, Cary, North Carolina 27513.
- (b) The Board's telephone number is (919) 678-8223. The Board's offices are open from 8:30 a.m. to 5:30 p.m., Monday through Friday.

History Note: Authority G.S. 90-26; 90-43; 90-48; Eff. May 1, 1989; Amended Eff. September 1, 2001; May 1, 1991.

CHAPTER 48 - EXAMINING COMMITTEE OF PHYSICAL THERAPY

21 NCAC 48A .0105 DEFINITIONS

The following definitions and the definitions in G.S. 90-270.24 will apply throughout Chapter 48:

- (1) "Educational programs" means physical therapy and physical therapist assistant educational programs accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE).
- (2) "Computer Based Testing" or "CBT" means the Federation approved National Physical Therapist and Physical Therapist Assistant Examinations administered by a testing agency approved by the Federation.
- (3) "Federation" means Federation of State Boards of Physical Therapy.
- (4) "Graduated" or "graduation" means the completion of all requirements, including clinical experience, from an accredited program for physical therapists or physical therapist assistants. If an educational program certifies that the degree is assured and will be conferred at a later date, an applicant will be considered to have been graduated.
- (5) "PT exam" means a Federation approved licensing examination for physical therapists.
- (6) Reserved.
- (7) "PTA exam" means a Federation approved licensing examination for physical therapist assistants.
- (8) "On-site supervision" means the supervising licensee is present in the department or facility where services are provided, is immediately available to the person being supervised and maintains continued involvement in aspects of treatment sessions in which students completing clinical requirements or physical therapy aides are involved in components of care.

History Note: Authority G.S. 90-270.24; 90-270.26; 90-270.31; Eff. February 1, 1976; Readopted Eff. September 30, 1977;

Amended Eff. August 1, 2002; August 1, 1998; November 1, 1991;

October 1, 1989; April 1, 1989; December 30, 1985.

21 NCAC 48B .0101 GENERAL REQUIREMENTS

History Note: Authority G.S. 90-270.24(5); 90-270.26; 90-270.34; 90-270.35(1), (2); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. December 30, 1985; November 9, 1979; October 28, 1979; Repealed Eff. August 1, 2002.

21 NCAC 48C .0102 RESPONSIBILITIES

- (a) The physical therapist must determine the patient care plan and the elements of that plan appropriate for delegation.
- (b) The physical therapist must determine that those persons acting under his or her supervision possess the competence to perform the delegated activities.
- (c) The physical therapist may delegate responsibilities to physical therapist assistants. The supervising physical therapist shall determine that the PT or PTA student is working under supervision at all times.
- (d) The physical therapist must enter and review chart documentation, reexamine and reassess the patient and revise the patient care plan as warranted.
- (e) The physical therapist must establish the discharge plan.
- (f) For each date of service, a physical therapist shall provide all therapeutic interventions that require the expertise of a physical therapist and shall determine the use of assistive personnel that provides delivery of service that is safe and effective for each patient.
- (g) A physical therapist's responsibility for patient care management shall include first-hand knowledge of the status of each patient and oversight of all documentation for services rendered to each patient, including awareness of fees and reimbursement structures.
- (h) A physical therapist must be immediately available directly or by telecommunication to a physical therapist assistant supervising a physical therapy aide or student engaging in patient care.
- (i) A physical therapist shall be limited to clinically supervising only that number of assistive personnel, including physical therapists assistants, physical therapy aides, and students completing clinical requirements, as is appropriate for providing safe and effective patient interventions at all times.
- (j) If a physical therapist assistant or physical therapy aide is involved in the patient care plan, the patient must be reassessed by the supervising physical therapist no less frequently than every 30 days.

History Note: Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34; Eff. December 30, 1985; Amended Eff. August 1, 2002; August 1, 1998; January 1, 1991.

21 NCAC 48E .0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(a) A foreign-trained physical therapist is one who has graduated from a program located outside the United States which has not been accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE), and includes programs in which the courses of instruction are not presented in English.

(b) English Translations. All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant shall submit the following:

- (1) If the applicant has graduated from a physical therapy educational program, a certification of physical therapy education shall be submitted directly to the Board.
- (2) If the applicant does not meet the requirements of G.S. 90-270.29(2), the Board shall examine the applicant's educational background to determine if the general college and professional instruction is substantially equivalent to that of a United States physical therapy educational program. For candidates applying for licensure prior to December 31, 2002, a minimum of 120 semester hours of college education at the freshman through senior level is required, which includes a minimum of 60 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education, and a minimum of 42 semester hours of general education. Up to 21 hours may be substituted for actual course work by obtaining a passing score on College Level Examination Program (CLEP) examinations. For candidates applying after December 31, 2002, the applicant's educational background must be substantially equivalent to a Post-Baccalaureate degree from a CAPTE approved physical therapy educational program. The applicant shall make arrangements to have the credentials evaluated by a credentialing service acceptable to the Board which must have a physical therapist consultant on its staff. The Board recognizes the Foreign Credentialing Commission of Physical Therapy, Inc. (FCCPT), or a service determined by the Board to be equivalent. The Board shall make its own review of applicant's educational program and is not bound by the findings of the credentialing service.
- (3) Proof acceptable to the Board shall be provided that:
 - (A) For examinations administered prior to August 1, 1998, the required minimum score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained;

(B) For examinations administered on or after August 1, 1998, the required minimum score of 50 on the TSE examination or the SPEAK examination was obtained, the required minimum score of the Test of Written English (TWE) of 4.5, and the Test of English as a Foreign Language (TOEFL) of 560; or

(C) English is the applicant's native language.

History Note: Filed as a Temporary Amendment Eff. July 21, 1995, for a period of 180 days or until the permanent Rule becomes effective, whichever is sooner;

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31; Eff. December 30, 1985;

Amended Eff. August 1, 2002; August 1, 1998; February 1, 1996;

October 1, 1995; November 1, 1991; August 1, 1991.

21 NCAC 48G .0204 RESTRICTED LICENSE

An individual reinstating a lapsed license shall successfully demonstrate to the Board competency in the practice of physical therapy or shall serve an internship under a restricted license. A "restricted license" is one on which the Board places restrictions or conditions, or both, for up to six months as to scope of practice, place of practice, supervision of practice, duration of license status, or type or condition of patient or client to whom the licensee may provide service.

History Note: Authority G.S. 90-270.26; 90-270.32; Eff. August 1, 2002.

21 NCAC 48G .0401 GROUNDS FOR PROBATION

The Board may place any licensee on probation for a period of time not greater than three years for engaging in conduct prohibited by G.S. 90-270.35 or G.S. 90-270.36 or 21 NCAC 48 when the Board determines that such conduct does not warrant revocation or suspension of a license.

History Note: Authority G.S. 90-270.26; 90-270.35; 90-270.36;

Eff. October 28, 1979;

Amended Eff. August 1, 2002; December 30, 1985.

21 NCAC 48G .0405 GROUNDS FOR REPRIMAND

Whenever grounds exist for placing a licensee on probation or issuing a warning, if the results of the informal meeting with the Board demonstrate that a public censure of the licensee would be counterproductive or unwarranted, a private reprimand may be issued to the licensee. "Private" means that the issuance of a reprimand will not be published on the Board's web page or in the Board's Newsletter.

History Note: Authority G.S. 90-270.26; 90-270.35; 90-270.36;

Eff. December 30, 1985;

Amended Eff. August 1, 2002.

21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- (1) name and address of person alleged to have violated Physical Therapy Practice Act;
- (2) succinct statement of conduct giving rise to complaint;
- (3) name, address and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that might subject a licensee to disciplinary action, or upon the receipt of confirmation that a violation of the Physical Therapy Practice Act has occurred, the Board may investigate such matter to determine whether probable cause exists to institute formal disciplinary proceedings.

(c) The executive director of the Board and a member appointed by the Chair shall serve as a probable cause or investigating committee. This committee may be assisted by the Board's attorney or investigator or by a former member of the Board or consultant who possesses expertise that will assist the Committee in its investigation retained for the purpose of such investigation.

(d) The probable cause committee shall investigate the complaint. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may issue subpoenas in the Committee's name for the production of documents pursuant to the provisions of 21 NCAC 48G .0512. The committee shall determine whether or not there is probable cause to believe that the licensee has violated any statute or board rule which would justify a disciplinary hearing. If the Committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the Committee's action and its reasons. The Committee may issue an advisory letter to the licensee, which is non-disciplinary and notifies a licensee that, while there is insufficient evidence to support disciplinary action, the Committee believes that the licensee should modify or eliminate certain conduct or practices. If the committee determines that such probable cause exists, the committee may confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee may cause to be drafted a proposed settlement agreement, which may include findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. Such settlement agreement shall be presented to and approved by the licensee before they are presented to the Board for consideration and approval.

(e) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board may give notice of a disciplinary or contested case hearing, if required.

(f) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the committee may recommend that the Board place the licensee on probation, issue a warning or issue a reprimand to the licensee. The committee shall mail a copy of its recommendation to the licensee.

(g) Within 20 days after receipt of the recommendation, the licensee may refuse the probation, warning, or reprimand and request a contested case hearing pursuant to this Section. Such refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing. In the alternative, the licensee may request an informal meeting with the Board pursuant to the provisions of 21 NCAC 48G .0404.

(h) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the committee's recommendation and present reasons why the Board should not follow the committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(i) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the committee's recommendation.

(j) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(k) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, with persons not parties to the contested case who may be called as witnesses, including the person who filed the complaint and with the Board members about other matters.

History Note: Authority G.S. 90-270.26; 150B-38; 150B-39; 150B-40; Eff. October 1, 1995; Amended Eff. August 1, 2002; August 1, 1998; February 1, 1996.

21 NCAC 48G .0602 SANCTIONS; REAPPLICATION

(a) The Board may, upon proof of a violation of G.S. 90-270.36 or these Rules, impose any of the following sanctions in its discretion:

- (1) issue a reprimand;
- (2) issue a warning to a licensee;
- (3) place a licensee on probation;
- (4) spend a license, the duration of which shall be determined by the Board;
- (5) revoke any license;
- (6) refuse to issue or renew a license;
- (7) accept a voluntary surrender of a license; and
- (8) charge the reasonable costs of investigation and hearing to a licensee who is disciplined.

(b) In addition to the sanctions specified in Subparagraphs (a) (2), (3) and (4) of this Rule, the Board may also impose restrictions and conditions on a license as to scope of practice, place of practice, supervision of practice, duration of licensed

status, or type or condition of patient or client served, including requiring a licensee to submit regular reports to the Board on matters related to the restricted license.

(c) A person whose license has been revoked or who surrenders a license:

- (1) shall not be permitted to reapply for a license for a period of two years from the date of revocation or surrender;
- (2) must submit as part of the reapplication process all materials requested by the Board related to the revocation or surrender and may be required to meet with the Board; and
- (3) may have the restrictions specified in Paragraph (b) of this Rule imposed in conjunction with the issuance of a license.

History Note: Authority G.S. 90-270.26; Eff. August 1, 2002.

TITLE 25 - OFFICE OF STATE PERSONNEL

25 NCAC 01B .0437 STATE PERSONNEL COMMISSION: PROCEDURES

(a) The State Personnel Commission Administrator, on behalf of the State Personnel Commission, shall receive the record in the contested cases forwarded by the Office of Administrative Hearings and the State Personnel Commission shall make a final administrative decision in the case. Any record received by the Administrator on the day of a Commission meeting shall be deemed to have been received after the Commission meeting and the time in which the Commission has to review and decide the case shall run from the Commission meeting. The Office of State Personnel shall be responsible for the administrative management of contested cases coming before the Commission for its review and decision.

(b) Oral Argument. Either party to a contested case may request the opportunity to appear before the State Personnel Commission and make oral argument in all cases. Such arguments shall be based solely on the information contained in the record submitted by the OAH. Oral arguments shall be requested or waived in writing no more than 10 calendar days after the filing date of the decision of the Administrative Law Judge and the parties shall attach a copy of the Administrative Law Judge's decision to the request or waiver. After the Commission has received either a request or waiver of oral argument from the parties, the Commission shall send a notice of review which shall contain the date, time and place of the Commission meeting at which the case may be reviewed. If a party has failed to request or waive oral argument in a timely fashion, that party may not be allowed to present oral argument or file legal briefs or memoranda to the Commission. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission. Time may be extended by the Commission for good cause shown as defined in 25 NCAC 01B .0439. All requests to speak for more than 10 minutes shall be made in writing in the same document which requests the opportunity to make oral argument. The party which did not prevail before the Administrative Law Judge is entitled to make

the first oral argument and to present a rebuttal. If both parties are seeking changes in the Administrative Law Judge's decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal.

(c) Briefs, Legal Memoranda, Attorney's Fees Requests. All briefs and legal memoranda in cases other than those arising under G.S. 14.4 shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Such document shall also be served upon the opposing party and a copy of the decision of the Administrative Law Judge shall be attached to the document. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Attorney's fees requests must be presented to the Commission by the prevailing party to a Commission Decision and Order at least one month before the meeting at which the matter is to be considered. Such requests must also be served upon the opposing party. The Commission shall notify the parties upon receipt of a request for attorneys fees and provide an opportunity for the opposing party to file objections to the fees requested. If the parties wish to make oral argument on an attorney's fees request, a request for oral argument must be received by the Office of State Personnel within two weeks after the filing of the attorney's fees request and at least one month prior to the meeting at which such oral argument is requested. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 1B .0439.

(d) Written Exceptions. Proposed Alternative Findings, Conclusions and Recommendations. Each party shall submit written exceptions to the decision of the Administrative Law Judge, unless the party accepts the decision in its entirety. Any party may choose to submit proposed alternative findings of fact and conclusion of law. Exceptions and alternative findings of fact and conclusions shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Written exceptions shall be specifically drawn. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. Any new decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be

set forth in detail. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the filing date of the Administrative Law Judge's decision. The Commission may adopt the findings of fact and conclusions of law of the Administrative Law Judge, or amend the same, or adopt alternative findings of fact and conclusion of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact in the Proposed Decision and Order. Any new conclusions of law or decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail in the Proposed Decision and Order. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail in the Proposed Decision and Order. The proposed Decision and Order shall contain an order in the case for the signature of the Administrator to the Commission, consistent with and supported by the findings and conclusions. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

(f) Service on Opposing Parties. Copies of all documents permitted or required by this Rule shall be served on the

submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

(e) Proposed Decision and Order. Each party to a contested case shall submit a proposed Decision and Order for consideration by the Commission in that case. The proposed Decision and Order shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. The Commission may delay decision in a case until all parties have submitted a proposed Decision and Order. The Proposed Decision and Order shall indicate which findings, conclusions, and recommendations of the Administrative Law Judge are being deleted or amended and why, and specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence. The Proposed Decision and Order must include the specific opposing party, but no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. If a document is filed electronically with the Commission as permitted in 25 NCAC 01B .0437(h), the document must also be served electronically on the opposing party if the opposing party has an electronic address. Electronic service must be followed by service of printed copies of any document filed electronically within 24 hours of electronic filing.

(g) Notification. The parties or when applicable, the legal representative of record for a party, shall be notified by certified mail, return receipt requested, of the Commission's decision. The Commission's decision shall be prepared and sent out by the Office of State Personnel. Copies or the content of a specific decision and order shall not be released to non-parties until the Office of State Personnel has knowledge that all parties have received a copy of the Decision and Order.

(h) Electronic Filing. Any documents which are required or permitted to be filed under 25 NCAC 01B .0437, may be filed electronically by midnight of the filing date with the State Personnel Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be filed with the Administrator in accordance with 25 NCAC 01B .0437(c), (d) and (e) within 24 hours of the electronic filing.

*History Note: Authority G.S. 126-4.
Eff. September 1, 1991;
Amended Eff. August 1, 2000; March 1, 1996;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. July 1, 2002.*

RULES REVIEW COMMISSION

Notification of Criminal Charges/Convictions	12	NCAC	09G .0302	Adopt
Probationary Certification	12	NCAC	09G .0303	Adopt
General Certification	12	NCAC	09G .0304	Adopt
Recertification Following Separation	12	NCAC	09G .0305	Adopt
Retention of Records of Certification	12	NCAC	09G .0306	Adopt
Certification of Instructors	12	NCAC	09G .0307	Adopt
General Instructor Certification	12	NCAC	09G .0308	Adopt
Terms of Conditions of General Instructor Cert	12	NCAC	09G .0309	Adopt
Specialized Instructor Certification	12	NCAC	09G .0310	Adopt
Terms and Conditions of Specialized Instructor Cer.	12	NCAC	09G .0311	Adopt
Instructor Certification Renewal	12	NCAC	09G .0312	Adopt
Corrections Instructor Training Course	12	NCAC	09G .0313	Adopt
Comprehensive Written Exam Instructor Training	12	NCAC	09G .0314	Adopt
Comprehensive Written Exam Specialized Instructor	12	NCAC	09G .0315	Adopt
Professional Lecturer Certification	12	NCAC	09G .0316	Adopt
Administration of Basic Corrections Training School	12	NCAC	09G .0401	Adopt
Accreditation of Corrections Schools	12	NCAC	09G .0402	Adopt
Accreditation of Training Courses	12	NCAC	09G .0403	Adopt
Pilo Course Presentation/Participation	12	NCAC	09G .0404	Adopt
Certification of Schools Directors	12	NCAC	09G .0405	Adopt
Terms and Conditions of School Director Cert	12	NCAC	09G .0406	Adopt
Suspension Revocation Denial/School Director Cert	12	NCAC	09G .0407	Adopt
Responsibilities of the School Director	12	NCAC	09G .0408	Adopt
Admission of Trainees and Course Enrollment	12	NCAC	09G .0409	Adopt
Waiver of Completion of Training	12	NCAC	09G .0410	Adopt
Basic Training for Correctional Officers	12	NCAC	09G .0411	Adopt
Basic Training for Probation/Parole Officers	12	NCAC	09G .0412	Adopt
Basic Training for Probation/Parole Officers Surv.	12	NCAC	09G .0413	Adopt
Instructor Training	12	NCAC	09G .0414	Adopt
Corrections Specialized Instructor Training Firearm	12	NCAC	09G .0415	Adopt
Corrections Specialized Instructor Training Unarm	12	NCAC	09G .0416	Adopt
Investigation of Violation of Rules	12	NCAC	09G .0501	Adopt
Sanctions for Violations by Agencies of Schools	12	NCAC	09G .0502	Adopt
Sanctions for Violations by Individuals	12	NCAC	09G .0503	Adopt
Suspension Revocation or Denial of Certification	12	NCAC	09G .0504	Adopt
Period of Suspension Revocation or Denial	12	NCAC	09G .0505	Adopt
Summary Suspensions	12	NCAC	09G .0506	Adopt
Purpose	12	NCAC	09G .0601	Adopt
General Provisions	12	NCAC	09G .0602	Adopt
Basic State Corrections Certificate	12	NCAC	09G .0603	Adopt
Intermediate State Corrections Certificate	12	NCAC	09G .0604	Adopt
Advanced State Corrections Certificate	12	NCAC	09G .0605	Adopt
Method of Application	12	NCAC	09G .0606	Adopt
Report Application and Certificate Forms	12	NCAC	09G .0701	Adopt
DENR/COASTAL RESOURCES COMMISSION				
Buffer Exceptions	15	NCAC	07H .0209	Amend
Oceanfront Setback Exceptions	15	NCAC	07H .0309	Amend
Accessory Building Definitions	15	NCAC	07K .0209	Amend
High Hazard Flood AEC	15	NCAC	07K .0213	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES				
Safety of Operation and Equipment	19	NCAC	03D .0801	Amend
Course of Instruction	19	NCAC	03J .0306	Amend
STATE BOARDS/N C ACUPUNCTURE LICENSING BOARD				
Standards for Continuing Education	21	NCAC	01 .0301	Amend
STATE BOARDS/DENTAL EXAMINERS, BOARD OF				
Definition: Unprofessional Conduct by a Dentist	21	NCAC	16V .0101	Amend
Definition: Unprofessional Conduct by a Dental Hyg	21	NCAC	16V .0102	Amend
STATE BOARDS/N C MEDICAL BOARD				
Clinical Pharmacist Practitioner	21	NCAC	32T .0101	Amend
STATE BOARDS/N C BOARD OF PHARMACY				

AGENDA
RULES REVIEW COMMISSION
September 20, 2001

- (I) Call to Order and Opening Remarks
- (II) Review of minutes of last meeting
- (III) Follow Up Matters
 - A. Department of Cultural Resources – 7 NCAC 4S .0104 Objection on 12/21/00 (DeLuca)
 - B. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
 - C. DENR/Environmental Management Commission – 15A 2D .1401; .1402; .1403; .1406; .1408; .1419; .1410; .1411; .1412; .1413; .1414; .1415; .1416; .1417; .1418; .1419; .1420; .1421; .1422; .1423 Extend Period of Review on 8/16/01 (DeLuca)
 - D. Commission for Health Services – 15A NCAC 18A .3334 Objection on 04/19/01; 07/19/01 (Bryan)
 - E. NC Department of Transportation – 19A NCAC 3J.0201, .0202, .0501, .0502,.0801, .0901, .0902, .0903, .0904, .0906 Objection on 8/16/01 (Bryan)
 - F. State Personnel Commission – 25 NCAC 1C .0214 Extend Period of Review on 8/16/01 (Bryan)
 - G. State Personnel Commission – 25 NCAC 1J .0603 Extend Period of Review on 8/16/01
- (IV) Review of rules (Log Report #179)
- (V) Commission Business
- (VI) Next meeting: Thursday, October 18, 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	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
<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>BOARD OF MORTUARY SCIENCE</u>				
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
<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	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 ²	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
<i>Child Support Enforcement Section</i>				
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01	
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01	
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01	
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	
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01	
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01	
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01	
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01	
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	
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01	
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01	
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01	
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01	
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01	
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01	

CONTESTED CASE DECISIONS

Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
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
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
Carlton Griffin Jr. v. Department of Health & Human Services	01 CSE 0211	Lassiter	08/20/01
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01
Carey Austin Spencer v. Department of Health & Human Services	01 CSE 0277	Conner	07/09/01
Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
Craig Darrell McLeod v. Department of Health & Human Services	01 CSE 0301	Gray	07/31/01
Nathaniel Gunter v. Department of Health & Human Services	01 CSE 0333	Morrison	06/25/01
Cantabile Jones v. Department of Health & Human Services	01 CSE 0357	Chess	07/06/01
Arlene Locklear v. Department of Health & Human Services	01 CSE 0358	Conner	07/20/01
Nolan D Schrader v. Department of Health & Human Services	01 CSE 0362	Elkins	08/07/01
Harvey L Hughes Sr. v. Department of Health & Human Services	01 CSE 0366	Gray	06/29/01
Denise Renee Nunn v. Department of Health & Human Services	01 CSE 0368	Morrison	06/05/01
Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01
Johnny Caldwell v. Department of Health & Human Services	01 CSE 0415	Conner	07/09/01
Timothy Ray Ledford v. Department of Health & Human Services	01 CSE 0416	Elkins	06/29/01
Leon B Feathersen v. Department of Health & Human Services	01 CSE 0423	Wade	08/10/01
Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01
Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
Luther W Covington v. Department of Health & Human Services	01 CSE 0438	Conner	07/20/01
Carl Franklin Slempp v. Department of Health & Human Services	01 CSE 0449	Morrison	07/12/01
Tennis Lee Perry v. Department of Health & Human Services	01 CSE 0450	Chess	07/06/01
Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
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STATE OF NORTH CAROLINA
COUNTY OF RICHMOND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
00 OSP 1039

ANDREAS K. DIETRICH Petitioner,)	
)	
)	
v.)	RECOMMENDED DECISION
)	
N.C. HIGHWAY PATROL; N.C. DEPARTMENT OF CRIME CONTROL & PUBLIC SAFETY Respondent.)	
)	

This case came on for hearing before the undersigned Administrative Law Judge on July 1, 2001 in Raleigh, North Carolina.

APPEARANCES

Petitioner: J. Michael McGuinness, Esquire, Elizabethtown, N.C.

Respondent Isaac T. Avery, III, Special Deputy Attorney General; Patricia Duffy, Assistant Attorney General; Raleigh, N.C.

ISSUE

1. Whether there was just cause under governing law to impose formal disciplinary action upon Petitioner Andreas Dietrich because of his comment and expression on December 13, 1999, in light of the totality of the circumstances surrounding his expression.

FINDINGS OF FACT

1. The parties stipulated that each party had received sufficient notice of the hearing and was ready for trial.
2. This case arose out of a five-day suspension of employment that was imposed upon Andreas K. Dietrich, a trooper serving on the North Carolina Highway Patrol. See Petitioner’s exhibit #1, the personnel charge sheet/disposition form.
3. The charge against Trooper Dietrich occurred on or about December 13, 1999, and arose from a discussion that he had with several troopers of the North Carolina Highway Patrol. In essence, Trooper Dietrich was alleged to have used inappropriate language in a discussion.
4. The first witness called was Kelly G. Williams, an attorney who has practiced law for 16 years in Rockingham. T10-11. Mr. Williams knows all of the judges, court officials and law enforcement officers in Richmond County, and he knows Petitioner Dietrich. T11.
5. Attorney Williams has observed Trooper Dietrich’s conduct and performance on a weekly basis, in judicial proceedings. T11-12. After his observations of Trooper Dietrich for several years, including discussions with court officials, judges, bailiffs and clerks of court, speak about him in the sense of his reputation. Attorney Williams testified that Trooper Dietrich is “beyond reproach.” Attorney Williams has overheard three judges comment about Trooper Dietrich’s honesty. T13. Trooper Dietrich does his job well. T13.
6. Attorney Williams has had individuals describe Trooper Dietrich’s conduct and performance to him as it related to traffic stops. T14. Attorney Williams never has heard anyone say anything ugly about Trooper Dietrich and he behaves as a gentlemen. T14. The defendants charged by Trooper Dietrich respect him. T14.
7. Attorney Williams has observed Trooper Dietrich confer and communicate with his superiors in the courtroom; he is very cordial to them and they relate well to each other. T14.
8. The undersigned finds the testimony and evidence presented by Attorney Williams to be credible and believable.

9. The next witness called was Rodney Peyton Norton. T15. Mr. Norton is currently employed as a Sergeant with the Rockingham Police Dept. T16. He previously served with the North Carolina Highway Patrol for 27 years of active duty and retired with 30 years of credited time. T16. Trooper Dietrich served under his supervision and command. T16.

10. Sgt. Norton has had occasion to observe Trooper Dietrich's conduct and character as a law enforcement officer. T17. Sgt. Norton has heard judges, court officials and others speak about Trooper Dietrich's conduct and character. T17. Sgt. Norton observed that Trooper Dietrich's conduct and character are "above reproach." T17.

11. Sgt. Norton served as Trooper Dietrich's training officer during his initial training. Sgt. Norton found Trooper Dietrich "to be very honest. He handled himself professionally. He always had a good attitude and the times I have worked with him after training and the times we have worked the same shift, I have found him to be very dependable, reliable and a pleasure to work with." T17-18.

12. Sgt. Norton testified that Trooper Dietrich was a productive, dedicated and professional trooper. T18. Sgt. Norton testified that Trooper Dietrich is held in high regard by court officials, court staff, lawyers and other police officers. T18. Sgt. Norton considers Trooper Dietrich to be an asset to the North Carolina Highway Patrol. T18.

13. The undersigned finds the testimony and evidence presented by Sgt. Norton to be credible and believable.

14. The next witness called was Andreas Dietrich. T22. Trooper Dietrich is 29 years of age, is currently assigned or stationed in Anson County as a member of the North Carolina Highway Patrol. T22. Trooper Dietrich's law enforcement certification always has been in good standing. T23.

15. Trooper Dietrich's disciplinary history includes merely one written warning for a patrol car accident which approximately was in November, 1997. T23.

16. On December 13, 1999, Trooper Dietrich was off duty but went to the Patrol station. T23. He went in to print out a wreck report. T24. Trooper Dietrich was not wearing his official Patrol uniform and was generally dressed casually with shorts and a sweatshirt. T24.

17. Present at the Patrol station in Hamlet that day were Trooper Johnny Benton, Trooper Collie and Trooper Harper. Also present in the office were Lt. Gunsalles, who then was a First Sgt., and Line Sgt. Foard. In the secretary's office were Vivian Roberts, the secretary, and Dee Benton, Trooper Benton's wife. T24.

18. Trooper Benton, Trooper Collie, Trooper Harper and Trooper Dietrich were in the bay area of the Patrol Station known as the squad room where the troopers have desks set up to do paperwork. T25. Trooper Dietrich initially went into that area for purposes of printing out his wreck report. T25.

19. Trooper Dietrich was volunteering his time that he was expending in connection with printing his wreck report. T25. Trooper Dietrich was seated in a desk facing the wall. T25. A general discussion developed among the troopers seated in that area, which included discussion about various topics. T26. It was not at all unusual for some of the troopers who were on duty as well as off duty to have general discussions about various topics. T26. Such general discussions were pretty common among troopers. T26.

20. On December 13, as Trooper Dietrich walked into the room, the discussion was about several newspaper articles that had allegedly put the Highway Patrol in a bad light. Some of the negative articles involved receiving payments for Christmas parties and the Highway Patrol raising money for the International Association of Chiefs of Police Conference in Charlotte. T27. According to the newspaper articles, there was some controversy about the Patrol raising money for the International Association of Chiefs of Police. T27.

21. Another news article that was being discussed involved raising money, troopers asking for donations for the district Christmas parties. T27. One of the press articles appeared to attribute some quotes to Colonel Richard W. Holden, Commander of the Highway Patrol. T28. There continued to be general discussion by Trooper Dietrich and other troopers in the group whereby they made various comments about the Patrol in connection with the news media coverage. T28.

22. Trooper Dietrich was seated during the entire length of the initial conversation. T28. Other troopers participating in the discussion were offering their opinions relative to the matters that had been observed in the news media coverage surrounding the North Carolina Highway Patrol. T28. There was nothing unusual about this particular occasion regarding troopers offering their opinions relative to matters that had been observed in the news media about the Highway Patrol. T28. Troopers frequently have those types of informal discussions amongst themselves. T29.

23. The nature of the discussion amongst the troopers was not serious; it was more jovial and there was laughing. T29.

24. One aspect of the discussion included the then forthcoming change of the administrations in North Carolina State Government. T29. There was some discussion that Governor Hunt was at the end of his tenure of service with the state. T29. When Trooper Dietrich and his fellow troopers were discussing those types of political matters, they were still joking around. T29.

25. In front of where Trooper Dietrich was seated, there were photographs of former Governor Hunt, former Secretary of Crime Control and Public Safety Richard Moore and Col. Richard Holden. T29-30.

26. Trooper Dietrich relayed the essence of the conversation as it continued. Regarding former Governor Hunt, as previously indicated he was on his last round of his administration and Trooper Dietrich commented to the effect "you're out of here." T30. Trooper Dietrich used the same tone and loudness when he made that comment as when he was talking earlier. T30.

27. Another topic of discussion was that former Secretary Richard Moore already had resigned his position as secretary and Trooper Dietrich commented to the effect "you're out of here." T31. As Trooper Dietrich made these brief comments regarding these public officials, he pointed up at the photographs on the wall. T31.

28. The comments made by Trooper Dietrich about these public officials were not planned, thought out comments, rather they were just part of a general and political discussion. T31-32.

29. After having made the comments about former Governor Hunt and former Secretary Moore, Trooper Dietrich pointed at Col. Holden's picture and said "and you can kiss my ass." T32. Trooper Dietrich did not plan out or think through that statement, and that statement arose from the general political discussion that he had with his colleagues. T32.

30. The whole conversation had laughter in it. T33. When Trooper Dietrich made the comments about former Governor Hunt, former Secretary Moore and Col. Holden, none of the troopers in the group that were in a position to overhear the comments objected to the comments. T33.

31. The volume of Trooper Dietrich's speech as he made the comments regarding Secretary Moore and Col. Holden was the same as the general tone of the conversation that was occurring; it wasn't any louder and it wasn't any softer. T33. The actual noise level during the conversation and discussions among the troopers was normal conversation among four people. T49.

32. Trooper Dietrich did not have any particular purpose in mind when he made those comments regarding the three public officials. T33. Trooper Dietrich did not have any animosity or malice toward any of those three officials. T33-34.

33. Looking back on the situation, Trooper Dietrich regretted making the statements about the officials. T34. Trooper Dietrich did not say anything else about either of the public officials that would have been of a derogatory nature. T34.

34. Through the course of Trooper Dietrich's service for the state, he has heard management officials use derogatory terms or tell jokes about other management officials. T34.

35. One of Trooper Dietrich's supervisors requested that he apologize for his comments. T35. Sgt. Gunsalles instructed Trooper Dietrich to apologize to Trooper Collie, and Trooper Dietrich did so. T36.

36. Trooper Dietrich cooperated in the Internal Affairs inquiry into the comments and discussions. T37. Following the Internal Affairs investigation, Trooper Dietrich was afforded a pre-suspension conference on February 7, 2000. T38. Trooper Dietrich appeared before Lt. Stevens, who advised him of the recommended disciplinary action against him. T38. Trooper Dietrich next heard from the Patrol regarding the imposition of disciplinary action on June 14, 2000. T39. During an advisory board hearing, Trooper Dietrich was advised that a secretary had misplaced paperwork, which accounted for the approximate 4 ½ month delay. T39. The personnel charge sheet disposition form, Respondent's exhibit #5, proposes a disciplinary action and it was signed and submitted on June 14, 4 ½ months after it was supposed to be served on Trooper Dietrich. T46.

37. Petitioner offered five exhibits, which were summarily identified on page 4 of the transcript. T4. Exhibit #1 consisted of the N.C. State Highway Patrol charge sheet and disposition form. See T8. Petitioner's exhibit #2 consisted of the N.C. State Highway Patrol report of investigation. See T9. That investigative report included background information and recorded statements of purported witnesses. Petitioner's exhibit #3 was a N.C. Highway Patrol directive. See T56. That directive relates to disciplinary procedural requirements. T56.

38. Trooper Dietrich apologized to Colonel Holden. T54. As he described looking back at the situation and his comments, it probably was something he should not have said. T54. The undersigned finds that Trooper Dietrich was a credible and believable witness.

39. Following Trooper Dietrich, there were no other witnesses presented by Trooper Dietrich; rather, he proceeded to offer additional exhibits. See T58. Exhibit #4, which was offered into evidence consists of official North Carolina Highway Patrol Personnel and Internal Affairs records which show disciplinary action taken against other troopers including the Patrol's true and actual practice of imposing discipline in similar contexts under the rule in issue in this case. T60.

40. After hearing argument regarding the disparate treatment evidence included within exhibit 4, the undersigned concluded that the evidence would be accepted as an offer of proof in the record for consideration by future tribunals but that the undersigned does not need it in order to decide the pending case. T65.

41. Petitioner's Exhibit #5 was identified and offered into evidence. T66. That document contains a summary of disciplinary actions against members of the Patrol in recent cases. T67. The undersigned proposed that Petitioner's exhibit #5 be placed under seal. T70. The undersigned concluded that exhibit 5 was not necessary for review and analysis in order to decide this case; however, the State Personnel Commission might want to examine it for purposes of proportionality and the undersigned believes that the evidence ought to be available to the State Personnel Commission if the Commission desires. T71.

42. Respondent's Exhibits 1-7 were admitted without objection. T76. Those exhibits consist of Patrol Policy, the Personnel Complaint, a January 13, 2000 memoranda from Lt. Moody to Captain Robinson, additional memoranda and a diagram.

43. The first witness called by the Respondent was Steven Gunsalles. T76. Lt. Gunsalles was at the Troop H District 2 Office on December 13, 1999. T77. Lt. Gunsalles was working on various types of paperwork that day. T77. Lt. Gunsalles explained the schematic diagram of the squad room, which appeared as exhibit 7. T77-78.

44. Although Lt. Gunsalles did not hear the discussion which preceded Trooper Dietrich's comments, he overheard the comments made by Trooper Dietrich regarding former Governor Hunt, former Secretary Moore and Col. Holden. T80. Lt. Gunsalles testified that he was able to hear Trooper Dietrich's comments in that regard over the other conversation in the room at the time. T80.

45. When asked what if anything he said to Trooper Dietrich after he observed the conduct he described regarding the comments by Trooper Dietrich, Lt. Gunsalles testified that "at that particular incident, I didn't say anything....I walked back into my office for a minute, collected my thoughts and then walked back out into the squad room... As we were on our way back to my office, I asked Trooper Dietrich to accompany us." T81. Lt. Gunsalles then had a conversation with Trooper Dietrich whereby he counseled him about the comments that he overheard and then directed him to apologize to the probationary trooper who was present. T81. Trooper Dietrich responded "yes, sir". T82.

46. Lt. Gunsalles testified that he was not part of the conversation taking place in the room moments before this occurred, referencing the discussion leading up to the comments by Trooper Dietrich. T84. Lt. Gunsalles did not hear the background discussion and conversation of a political nature or otherwise. T89.

47. On the following day, Lt. Gunsalles went to his superior officer, who at the time was Lt. Newton. T86. He explained the incident to Lt. Newton, who told him to see the Captain about it; they then conferred with Capt. Osborne, who instructed Lt. Gunsalles to complete an HP 307, Personnel Complaint Sheet. T86.

48. The reason that Lt. Gunsalles directed Trooper Dietrich to apologize to Trooper Collie was because he was a rookie trooper that just was getting started. T89.

49. Lt. Gunsalles testified that he was not in the room long enough to know whether the conversation that the troopers were participating in was a joking type of communication. T92.

50. Lt. Gunsalles was referred to page 8 of his statement whereby he referenced the conduct as being sort of picking. T93.

51. Lt. Gunsalles testified that this was not the first occasion when he had heard a fellow trooper say anything of a derogatory nature about a member of Patrol management or some public official. T94. Lt. Gunsalles was present when another trooper, J. K. Carpenter, referred to some other trooper as an MF or as a son of a bitch. T96. Lt. Gunsalles was told that that trooper received a one-day suspension for that conduct. T97. Lt. Gunsalles testified that he heard him refer to another trooper as an MF, but did not hear any reference to son of a bitch. T97. The situation involving the other trooper was actually in the district meeting at the time, and it was a confrontational type of remark that was made. T97.

52. Lt. Gunsalles testified that while Trooper Dietrich was under his command, he was an above-average trooper. T98.

53. Petitioner's Exhibit #3 is a portion of official rules and regulations which appear in the North Carolina State Highway Patrol Policy and Procedures Manual. The Highway Patrol manual contains rules, regulations and procedures to be followed in disciplinary matters.

54. Petitioner contended that his suspension of employment was imposed in violation of North Carolina State Highway Patrol directive number F-2(e) which appears on pages 12 and 13 of that directive, which is contained within Exhibit 3. That particular directive provides in pertinent part that "the final decision to impose suspension should not be communicated to the member prior to the beginning of the next business day following the conclusion of the pre-suspension conference or after the end of the second business day following the completion of the pre-suspension conference. Petitioner's evidence demonstrated that there was an approximate four month delay in the imposition of the suspension following the pre-suspension conference. The Respondent did not offer any evidence to dispute Petitioner's contention that the Patrol did not comply with its own directive, and in fact the exhibits of records demonstrate that Petitioner's assertion was correct. This is an additional basis to warrant not imposing discipline in this case.

55. The admitted Internal Affairs report included the recorded statement of First Sgt. S. N. Gunsalles. The Internal Affairs officer questioning First Sgt. Gunsalles asked whether the communication was: "He was more picking?" Page 7 of First Sgt. Gunsalles' statement. First Sgt. Gunsalles responded: "Well, like I said, I couldn't pos, I can't show you. I don't know what the conversation was before I walked in there or what, what was goin' on. If I had my guess, it'd be pick, picking and sort of, I'm one of the, the older guys here type attitude." Sgt. Gunsalles' statement at page 8.

56. The Internal Affairs report also included the recorded interview with Office Assistant Vivian Roberts. See Internal Affairs report at pages 8-11. Ms. Roberts is the secretary for Troop H in Hamlet. Page 8 of the IA report. Ms. Roberts stated that she did not actually hear any statements made herself. Page 9 of the IA report. Ms. Roberts was asked if she head any loud or boisterousness coming from the troopers' office and she responded that she did not. Page 9 of the IA report. Ms. Roberts further explained: "I didn't think, unusually loud or boisterous. It was just a regular conversation that goes on out there all the time. You know, whenever three or four of them are out there, they're just laughin' and talkin', so, I didn't actually pay any attention to it." Page 11 of the IA report, quoting Ms. Roberts.

57. The Internal Affairs report included the recorded interview with Line Sgt. R. M. Foard. Sgt. Foard described in his statement that: "When I walked through the room going to the secretary's office, it seemed like everybody was laughing and carrying on, cuttin' up. The troopers among each other out there." Page 21 of Internal Affairs report. Sgt. Foard further explained: "I could hear no, no comments, but, you know, like a burst of laughter every so often..." Page 22 of IA report.

58. The Internal Affairs report included a recorded interview with Trooper R. M. Collie. See pages 36-44 of the Internal Affairs report. After describing his observations and the background to the communication, Trooper Collie reported: "They weren't bein' serious because they were just like jokin' around as far as they needed to change the pictures...because the Secretary of State is gonna change, and everything that was goin' on, and of course the Colonel's position being very political, that, you know, with everything that's goin' on, his picture might change. So, I think that's what the, they were makin' light of the subject there, and they said, I don't know how they got on the subject as far as the Colonel, but then Trooper Dietrich said something about somebody kissin' his butt or somethin' like that, and I really didn't think anything about it..." Page 37 of the IA report.

59. Trooper Collie explained that Trooper Dietrich apologized to him and said he was sorry and Trooper Collie explained that: "I was kind of surprised, but I really didn't think anything about it, you know. I think they were just jokin' around, I mean, they weren't being serious..." Internal Affairs report at 38. Trooper Collie further explained that: "I told Dietrich, you know, not to worry about it, as far as, if he felt bad, you know, or embarrassed about sayin' it to me. I said, don't feel bad, you know, sometimes I guess everybody feels that way. I might even feel that way too sometimes. You know, and that was the end of it." Internal Affairs report at 39.

60. Trooper Collie was later asked whether or not he and his training officer have talked about the matter and Trooper Collie responded "not about that particular incident." Internal Affairs report at 40.

61. Trooper Collie further explained: "I think they were jokin' around, you know, so I don't think it was anything serious..." IA report at 40. When he was further specifically asked about whether they were laughing and joking around or whether they were serious, Trooper Collie definitively indicated: "No, they were joking." Internal Affairs report at 41.

62. Trooper S. T. Harper also was interviewed, which appears in the Internal Affairs report at pages 44-49. Trooper Harper provided a recorded statement indicating that he did not personally hear the comment. Internal Affairs report at 44. He explained: "the times I've been around Trooper Dietrich he's always been Patrol oriented, and, and I, I've personally, every time I've been, I've never heard this sort of thing. I mean we always pick around and joke about..." IA report at 46. Trooper Harper described that it "was more, joking than anything. Everybody was sitting around laughin', that sort of thing...there were several people in there laughin'." IA report at 47.

63. The comments made by Trooper Dietrich, which are the subject of this case, were not made or directed to anyone with any hostile or serious intent. The comments and discussion arose out of a "shop talk" environment where troopers were discussing political matters and engaging in general discussion. There is no evidence whatsoever that Trooper Dietrich meant any harm or offense by his comments. Trooper Dietrich's comments, including his apology as well as his in-court testimony, conduct and demeanor, reflect that the comments in dispute were mere chatter which were not motivated by any illicit or wrongful intent.

64. Trooper Dietrich's comments did not intend to harm and did not harm the North Carolina Highway Patrol or Col. R. W. Holden. Trooper Dietrich's professionalism was further displayed as a result of his apology for the comments that he did in fact make. Trooper Dietrich did not intend to violate any Patrol policy.

65. The language in this case was not directed personally to Colonel Holden, or to former Governor Hunt or former Secretary Moore. Therefore, the language used did not constitute "fighting words". The comments in dispute arose from a laughing, jovial and joking manner, were not serious, and were not intended to be serious. The communication in dispute was not and did not constitute a personal attack upon Colonel Holden or anyone else. The comments in dispute were merely an off-the-cuff isolated simple sentence that did not include any vulgarity, other than a single reference to the term "ass."

66. The totality of the speech and conduct of Trooper Dietrich, under the particular circumstances then existing, did not constitute a breach or a violation of rules of the North Carolina Highway Patrol. The situation was an extremely limited, extremely isolated event that was truly trivial in nature.

67. Highway Patrol policy contains a rule which prohibits "unbecoming conduct." See Respondent's exhibit 1A, at page 2, referencing NCSHP Directive No. F.1, section IV. That rule purports to prohibit "any conduct which tends to bring the Patrol into disrepute or which reflects discredit upon any member(s) of the Patrol or which tends to impair the operation and efficiency of the Patrol or of a member, or which violates Patrol policy." There are not any criteria, standards or interpretive guidelines to aid in understanding the scope of this "conduct unbecoming" rule. On its face, this general "conduct unbecoming" rule is vague and ambiguous.

68. The actual remarks made by Trooper Dietrich did not bring the Patrol into any disrepute; There was no such evidence offered, nor would it be reasonable to assume or opine that the Patrol was harmed by the speech in any way. The actual remarks made by Trooper Dietrich did not bring any member of the Patrol into any disrepute; there was no such evidence offered. The actual remarks made by Trooper Dietrich did not in any way impair the operation and efficiency of the Patrol; there was no such evidence offered.

69. Neither Colonel Holden, nor any other member of the Patrol, or the Patrol itself, was held up to any ridicule, scorn, humiliation or other adversity as a result of the limited comments by Trooper Dietrich in the particular context.

70. The actual conduct of Trooper Dietrich did not violate the Patrol's "unbecoming conduct" rule or any other of its conduct rules.

71. Trooper Dietrich's conduct in this particular case simply does not rise to the level of constituting just cause for formal disciplinary action. There was simply no injury or interference with any Patrol mission, nor was there any harm inflicted upon anyone or the Patrol arising from these particular circumstances.

72. The undersigned has considered the context of the particular remark, how it was made, the people present, and the atmosphere surrounding it. The totality of those considerations demonstrates that there was no basis for any formal disciplinary action against Trooper Dietrich. As the undersigned has observed, by taking the action that it has taken, the Patrol has sent a message. T128.

73. The undersigned finds that Trooper Dietrich is a very good, honest and productive trooper. He is an asset to the Highway Patrol. Trooper Dietrich's trial testimony, his demeanor and attitude, and his professional attributes have convinced the undersigned that he was appropriately regretful and apologetic for his comments, and that he will not repeat them.

CONCLUSIONS OF LAW

1. The doctrine of law which requires just cause for disciplinary action requires that there be some significant and meaningful violation in order for there to be just cause for formal disciplinary action. Where the employee's position is non-managerial, the just cause standard generally requires the existence of objective grounds for discipline that would be satisfactory to a reasonable person. See generally Stevens v. G. L. Rugo, 209 F.2d 135 (1st Cir. 1953).

2. Even if there was a technical violation of Patrol policy, which the undersigned finds did not occur, any such infraction was trivial and non-substantial. Therefore, it would not constitute just cause and would be insufficient in which to sustain formal discipline.

3. The actual conduct of Trooper Dietrich did not violate the Patrol's "unbecoming conduct" rule or any other of the Patrol's conduct rules.

4. There is no justifiable basis, in law or fact, to impose formal discipline upon Trooper Dietrich because of his expression on December 13, 1999 under the particular circumstances.

5. A number of cases from the United States Supreme Court, lower courts and the North Carolina State Personnel Commission have recognized and reaffirmed that the imposition of formal discipline for expression is often impermissible on constitutional and other grounds. E.g., Edwards v. City of Goldsboro, N.C., 178 F.3d 231 (4th Cir. 1999). The following cases provide support for Trooper Dietrich's position.

6. The Supreme Court has held that the First Amendment demands a tolerance of verbal tumult, discord, and even offensive utterance. Waters v. Churchill, 114 S.Ct. 1878, 1886 (1994).

7. In Rankin v. McPherson, 483 U.S. 315 (1987), the Supreme Court addressed the issue of a law enforcement officer who made arguably ugly and even threatening remarks about President Reagan. The issue before the Court in Rankin was whether an employee in a county constable's office was properly discharged for remarking after hearing of the attempted assassination of President Ronald Reagan, "if they go for him again, I hope they get him." The Court in Rankin concluded that the speech was protected. Rankin teaches that the scope of speech protection for law enforcement officers is extremely broad. The speech in Rankin could possibly be construed as the encouragement of a most serious criminal act. However, the Supreme Court held that it still was protected speech.

8. Another case in the specific law enforcement context as in this case is, Chafin v. Waters, 684 F.2d 833 (5th Cir. 1982). There, a law enforcement officer referred to his chief in the most vulgar, profane and derisive terms. He was off-duty and chatting with a fellow cop. That is nearly the identical context of Trooper Dietrich here. What Officer Chafin had to say about his chief was far more offensive, hostile, personal and demeaning than the one mere isolated comment that Trooper Dietrich made regarding Colonel Holden. The Court found that Chafin's referring to his chief as a "son of a bitch, a bastard, as sorry as they come and nothing but a back stabbing son of a bitch" was engaging in protected speech. Accord Flanagan v. Munter, 890 F.2d 1557 (10th Cir. 1989)(discipline of police officer not justified because some found his expression offensive); Berger v. Battaglia, 779 F.2d at 997 (4th Cir. 1985)(discipline of police officer not justified even where his conduct was grossly offensive to a large segment of the community).

9. Respondents' contentions are not unlike those in Cohen v. California, 403 U.S. 15, 91 S. Ct. 1780 (1971) where a defendant was accused of breaching the peace by walking through a courthouse corridor wearing a jacket bearing the words "F___ the draft" in a place where women and children were present. Unquestionably, the use of the four-letter expletive was offensive, particularly in a place where women and children were present. However, because of our country's historic commitment to free speech, even if hostile or ugly, such speech has been recognized as constitutionally protected as the Supreme Court explained in Cohen. The same is true here. Cohen was premised upon "his exercise of the freedom of speech protected from arbitrary governmental interference by the constitution..." In Cohen, the Court explained and distinguished the "fighting words" doctrine whereby directly personally abusive epithets may be limited where they are presented directly to a hearer in a context which would be inherently likely to provoke violent reaction. 403 U.S. at 20, citing Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). The Court observed how in the particular instance in Cohen, that the four-letter word displayed by Cohen was not employed "in a personally provocative fashion" and "was clearly not directed to the person of the hearer." Cohen's speech, however distasteful as interpreted by some and however profane, nasty or unkind, was an innocuous comment of the times.

10. In Charles Lindquist v. N.C. Highway Patrol (98 OSP 0170), a North Carolina state trooper publicly communicated remarks that were harsh and critical of the then Patrol Commander, Colonel E.W. Horton. Trooper Lindquist's remarks were published. The Patrol contended that Trooper Lindquist's speech accused Colonel Horton of being untruthful. Trooper Lindquist was subjected to a written warning for his expression. Trooper Lindquist contended that the written warning was inappropriate, inaccurate and misleading and file a contested case. Following a trial, the Recommended Decision ruled in Trooper Lindquist's favor. The North Carolina State Personnel Commission agreed and adopted the Recommended Decision. The Lindquist cases provides valuable precedent for Trooper Dietrich. Trooper Dietrich's expression was made in a limited nearly private context where troopers were joking around. There was no evidence of or likelihood of any public embarrassment from Trooper Dietrich's comment.

11. The undersigned takes judicial notice of the proposition that Troopers serving the North Carolina Highway Patrol have challenging, difficult, stressful and dangerous jobs. Troopers, like other public employees and officials, will occasionally say things

that they should probably should not say. Ideally, it is desired that law enforcement officers be near perfect; however, that is not a realistic standard. Every occasion of arguably ugly speech that someone does not like does not warrant formal discipline. This case does not warrant any formal discipline.

12. As an alternative ground for not imposing formal discipline in this case, the Patrol has failed to comply with its own regulations. See North Carolina State Highway Patrol directive number F-2(e) which appears on pages 12 and 13 of that directive, which is contained within exhibit 3. See Finding of Fact # 55 above. Governmental employers must comply with their own regulations. See, e.g., Vitarelli v. Seaton, 359 U.S. 535, 546 (1959)(Frankfurter, J. concurring, joined by Clarke, Whittaker & Stewart); Securities & Exchange Comm. v. Chery, 318 U.S. 80, 87 - 88 (1942); Service v. Dulles, 354 U.S. 363 (1957); Beacom v. EEOC, 500 F. Supp. 428 (D. Ariz. 1980)(public employee must be accorded benefit of agency's regulations). See United States v. Heffner, 420 F.2d 809, 811 (4th Cir. 1970), where the Fourth Circuit included a thoughtful discussion of Shaughnessy and other United States Supreme Court cases which stand for this central proposition. The Court observed that in Shaughnessy that the Supreme Court vacated a governmental decision because "the procedure leading to the order did not conform to the relevant regulations. The failure of the board and of the Department of Justice to follow their own established procedures was held a violation of due process." 420 F.2d at 812. "The Accardi Doctrine was subsequently applied by the Supreme Court in Service v. Dulles, 354 U.S. 363 (1959), and Vitarrelli v. Seaton, 359 U.S. 535 (1959), to vacate the discharges of government employees." 420 U.S. at 812. These principles have been cited as applicable in contemporary public employee constitutional litigation in North Carolina. See Sumler v. City of Winston-Salem, 448 F. Supp. 519, 529 (M.D.N.C. 1978).

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that the State Personnel Commission find that there was no just cause for the imposition of formal disciplinary action upon Petitioner, including any transfer of duty station or supervision, and that counsel fees and costs be awarded to Petitioner.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statutes Section 150B-36(b).

NOTICE

Before the agency makes the FINAL DECISION, it is required by N.C.G.S. Section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by N.C.G.S. Section 150B-36(b) to serve a copy of the Final Decision ton all parties and to furnish a copy to the Parties' attorney of record.

This 13th day of August, 2001.

Beecher R. Gray
Administrative Law Judge