

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

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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
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5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

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	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/00/02	03/04/02	03/20/02	05/00/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/00/02	03/18/02	03/20/02	05/00/02	10/12/02
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17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

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. 12
EXTENDING EXECUTIVE ORDER NO. 48**

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

Executive Order No. 48, Concerning the State Commission on National and Community Service (now known as the "North Carolina Commission on Volunteerism and Community Service"), as previously extended and as previously amended by Executive Order No. 174 issued by Governor James B. Hunt, Jr. on November 8, 2000, is hereby extended until December 31, 2003.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 9th day of October, 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 13
GOVERNOR'S TASK FORCE FOR
HEALTHY CAROLINIANS**

WHEREAS, North Carolina is blessed with some of the finest medical facilities and medical care found anywhere in the world; and

WHEREAS, despite these resources, more than forty North Carolinians die prematurely each day, exacting an enormous economic, social and personal toll upon our society; and

WHEREAS, most of these deaths are preventable by relatively simple changes in individual lifestyle behavior; and

WHEREAS, in order to provide to the citizens of our state a way to prevent this tragic loss of death and disability, a realistic plan needs to be developed that communities and individual citizens may use to improve their health status and avoid premature deaths; and

WHEREAS, this plan must promote the advantages of health promotion and disease prevention.

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

Section 1. Establishment and Rescission of Prior Orders

The Governor's Task Force for Healthy Carolinians (Governor's Task Force) is hereby established. The Governor's Task Force established herein is the successor organization to the Governor's Task Force on Health Objectives for the Year 2000, established in Executive Order No. 56 issued by Governor James B. Hunt, Jr. on July 13, 1994.

Section 2. Membership

The Governor's Task Force shall have 37 members. The Governor shall appoint 33 members, including the Chair. The Vice Chair shall be elected by the Governor's Task Force. The President Pro Tempore of the Senate shall be invited to appoint two Members of the Senate, one of whom serves on the Public Health Study Commission. The Speaker of the House of Representatives shall be invited to appoint two members of the House, one of whom serves on the Public Health Study Commission. Each member of the Task Force shall be appointed for terms of four years, and will serve until appointment of a successor. A vacancy on the Governor's Task Force shall be filled by the original appointing authority.

The Governor shall appoint representatives from the following:

- a. Secretary, Department of Health and Human Services, or designee;
- b. Association of North Carolina Boards of Health;
- c. North Carolina Hospital Association;
- d. North Carolina Medical Society;
- e. North Carolina Academy of Family Physicians;
- f. North Carolina Association of Local Health Directors;
- g. Dean, School of Public Health, University of North Carolina-CH, or designee;
- h. North Carolina Citizens for Business and Industry;
- i. North Carolina Commission on Indian Affairs;
- j. North Carolina Association of County Commissioners;
- k. National Association for the Advancement of Colored People;
- l. Mental Health/Developmental Disabilities/Substance Abuse Services Division, DHHS;
- m. State Health Director, Division Of Public Health, DHHS;
- n. Director, Office of Research, Demonstrations and Rural Health Development, DHHS or designee;
- o. North Carolina Dental Society;
- p. North Carolina Nurses' Association
- q. Old North State Medical Society;
- r. North Carolina Public Health Association;
- s. Commissioner, NC Department of Agriculture and Consumer Services, or designee;
- t. Office of Minority Health, DHHS;
- u. Superintendent of Public Instruction, or designee;

EXECUTIVE ORDERS

- v. Governor’s Council on Physical Fitness and Health;
- w. Eleven at-large members, including a representative of local education, religious organization, older adults and non-profit organizations.

WHEREAS, the problem of homelessness denies a segment of our population their basic need for adequate shelter; and,

WHEREAS, several State agencies offer programs and services for homeless persons; and,

WHEREAS, to combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

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

Section 3. Functions

a. The Governor’s Task Force shall meet regularly at the call of the Chair.

b. The Governor’s Task Force will advise the State Health Director and the Secretary of the Department of Health and Human Services on policies, programs and resources needed to improve the public’s health in North Carolina.

c. The Governor’s Task Force shall have the responsibility to periodically review the state health objectives, make amendments as necessary, and report progress toward achieving the objectives to the Governor, Secretary of DHHS, and the State Health Director.

d. The Governor’s Task Force shall have the power to designate local Healthy Carolinians Task Forces, comprised of representatives of public and private organizations, and community members and leaders, which support the goals of the Governor’s Task Force.

e. The Governor’s Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor’s Task Force.

f. The Governor’s Task Force shall review the Preventative Health and Health Services Block Grant annually and carry out the necessary functions of the advisory committee as required by federal law.

Section 1. Establishment

The North Carolina Interagency Council for Coordinating Homeless Programs is hereby established.

Section 2. Membership

The Interagency Council shall consist of a chairman appointed by the Governor and 27 additional members who shall be appointed by the Governor from the following public and private agencies and categories of qualifications:

- (a) One member from the Department of Administration.
- (b) One member from the North Carolina Housing Finance Agency.
- (c) One member from the Office of State Planning.
- (d) One member from the North Carolina Community College System.
- (e) One member from the Department of Correction.
- (f) One member from the Department of Cultural Resources.
- (g) One member from the Department of Commerce.
- (h) Two members from the Department of Health and Human Services, one representing the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and one representing the AIDS Care Branch.
- (i) One member from the State Board of Education or a member from the Department of Public Instruction.
- (j) One county government official.
- (k) One city government official.

Section 4. Administration

a. Administrative support for the Governor’s Task Force shall be provided by the Department of Health and Human Services.

b. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor’s Task Force in carrying out the provisions of this Order.

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

Done in the Capital City of Raleigh, North Carolina, this 9th day of October, 2001.

Michael F. Easley
Governor

ATTEST

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 14
NORTH CAROLINA INTERAGENCY COUNCIL
FOR COORDINATING HOMELESS PROGRAMS**

- (l) Six members from non-profit agencies concerned with housing issues and service provision to the homeless.
- (m) One homeless or formerly homeless person.
- (n) Two members from the private sector.
- (o) Three members of the North Carolina Senate.
- (p) Three members of the North Carolina House of Representatives.

The Office of Economic Opportunity of the Department of Health and Human Services shall provide administrative and staff support services required by the Interagency Council.

This Executive Order is effective immediately and shall remain in effect until rescinded. Done in the Capital City of Raleigh, North Carolina, the 28th day of November 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 15
TO ESTABLISH THE HEAVY DUTY DIESEL
RULE EFFECTIVE DATE**

WHEREAS, North Carolina has participated in a multi-state initiative to prevent excess emissions from heavy-duty diesel engines; and

WHEREAS, on October 11, 2001, the Environmental Management Commission adopted Heavy Duty Diesel Engine Requirements at 15A NCAC 2D .1008, and on November 15, 2001, the permanent rule was approved by the Rules Review Commission; and

WHEREAS, the rule serves to fill a two-year gap in federal requirements for the use of supplemental test procedures for certification of heavy-duty diesel engines with emission standards at the manufacturing stage; and

WHEREAS, without the gap-filling rule, excess NOx emissions would be produced over the life of any engines produced during the gap model years – 2005 and 2006, contributing unnecessarily to North Carolina’s challenging ozone problems; and

WHEREAS, the standard effective date of the permanent rule under the Administrative Procedures Act, N.C.G.S. 150B-1 et seq, would be July 1, 2002, at the earliest; and

WHEREAS, for the rule to apply to any particular model year, it must be effective two years prior to the commencement of that model year, the standard effective date would not allow the permanent rule to achieve its intended NOx reductions for the motor vehicle model year 2005; and

WHEREAS, the Administrative Procedures Act authorizes the Governor, by Executive Order, to make effective a permanent rule upon finding that it is necessary to protect public health, safety and welfare.

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

Section 3. Chair and Terms of Membership

Each appointment shall be for a term of 3 years. (Initial terms of membership for the other members of the Interagency Council shall be staggered with those members from state departments or agencies and the North Carolina General Assembly serving three year terms and other members serving two year terms. Each appointment thereafter shall be for a term of two years.)

Section 4. Meetings

The Interagency Council shall meet quarterly and at other times at the call of the Chair or upon written request of at least five (5) of its members.

Section 5. Functions

- (a) The Interagency Council shall advise the Governor and Secretary of the Department of Health and Human Services on issues related to the problems of persons who are homeless or at risk of becoming homeless, identify and secure available resources throughout the State and nation and provide recommendations for joint and cooperative efforts and policy initiatives in carrying out programs to meet the needs of the homeless.
- (b) The Interagency Council shall set short-term and long-term goals and determine yearly priorities.
- (c) The Interagency Council shall submit an annual report to the Governor, by November 1, on its accomplishments and the status of homelessness in North Carolina.

Section 6. Expenses

Council administrative costs, special function expenses and the cost of member per diem, travel and subsistence expenses shall be paid from state funds appropriated to the Department of Health and Human Services.

Section 7. Staff Assistance

EXECUTIVE ORDERS

Section 1. Findings.

It is necessary that the permanent rule regarding heavy-duty diesel engine emission requirements, 15A NCAC 2D .1008, become effective no later than December 31, 2001, in order to provide the emission control reductions for both motor vehicle model years 2005 and 2006, for the protection of the public health, safety or welfare.

Section 2. Effective Date of the Rule.

The permanent rule regarding heavy-duty diesel engine emission requirements, 15A NCAC 2D .1008, is hereby made effective December 31, 2001, pursuant to the Executive Order Exception authority contained in the Administrative Procedures Act, N.C.G.S. 150B-21.3(c).

Section 3. Effective Date

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

Done in Raleigh, North Carolina, this the 27th day of December, 2001.

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.

U.S. Department of Justice

Civil Rights Division

JDR:MSR:SMC:nj
DJ 166-012-3
2001-1455

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

November 21, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for the City of High Point in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 16, 2001, request for additional information through November 12, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:GS:JDW:par
DJ 166-012-3
2001-3342
2001-3898

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

December 6, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for the Pitt County Commission and School District in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on October 9, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:DHH:KIF:nj
DJ 166-012-3
2001-3735

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

December 17, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for Washington County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 8, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:JBG:SL:jdh
DJ 166-012-3
2001-3627

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

December 19, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for the City of Jacksonville in Onslow County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 30, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:DCM:nj
DJ 166-012-3
2001-3728
2001-3730

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

December 20, 2001

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Mr. Crowell:

This refers to the 2001 redistricting plan for Board of Commissioners and Board of Education in Granville County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on November 8, 2001; supplemental information was received on December 3, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:TCH:TAR:par
DJ 166-012-3
2001-3752

*Voting Section – GSt.
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

January 3, 2002

Deborah R. Stagner, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, NC 27602-1151

Dear Ms. Stagner:

This refers to the 2001 redistricting plan for the Edgecombe County Board of Education in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 9, 2001; supplemental information was received on December 5, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

PUBLIC HEARING NOTICE

TITLE 23 - COMMUNITY COLLEGES

Due to inclement weather, the public hearing date for receiving comments on Rules 23 NCAC 02C .0305 Education Services for Minors, 23 NCAC 02E. .0402 Provision for Occupational Extension In-plant Skills Training at an Individual Work Station, and 23 NCAC 02E .0403 Instruction to Captive or Co-opted Groups has been re-scheduled from January 4, 2002 to February 5, 2002 at 10:00 a.m. in the first floor conference room of the North Carolina Community College System Office at 200 W. Jones St., in Raleigh, NC. The Notice of Text and Hearing for these Rules was originally published in Volume 16, Issue 12 of the North Carolina Register.

**PUBLIC NOTICE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
HAZARDOUS WASTE SECTION
1646 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1646
(919) 733-2178**

Notice of proposed issuance of and public comment period for a delisting petition under the Federal Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 (PL 98-616) and the North Carolina Hazardous Waste Management Rules (15A NCAC 13A) for GlaxoSmithKline (GSK), Research Triangle Park, Durham County, North Carolina.

The public comment period will begin on the date of this Notice and extend for thirty (30) days thereafter. Comments regarding the delisting petition should be sent to the following address:

Jill B. Pafford, Chief
North Carolina Hazardous Waste Section
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

All data submitted by the applicant is available as part of the administrative record. A copy is available for review from 9:00 a.m. to 4:00 p.m., Monday through Friday at the:

Hazardous Waste Section
401 Oberlin Road, Room 150
Raleigh, North Carolina 27605
Call (919) 733-2178 extension 311 for an appointment.

Here is a summary of the delisting petition.

The Hazardous Waste Section is preparing to approve GSK's delisting petition for lime from their incinerator's air pollution control equipment. The lime is currently considered hazardous, but tests show it does not contain constituents at a level that cause it to be considered hazardous waste. Data was collected over several weeks, under conditions that indicate worst-case levels of chemical constituents. If the delisting is approved, GSK will be allowed to send this waste to a North Carolina lined municipal landfill for disposal.

All comments received during the public comment period will be considered in the decision-making process regarding the delisting petition.

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 04 – DEPARTMENT OF COMMERCE

CHAPTER 03 – BANKING COMMISSION

Notice of Rule-making Proceedings is hereby given by NC Office of the Commissioner of Banks 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: 04 NCAC 03I. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 53-92, 53-93, 53-288, 53.243.03, 53-243.04, 53-243.07, 53-243.09, 53-243.13

Statement of the Subject Matter: *Licensure and Governance of Mortgage Brokers and Bankers.*

Reason for Proposed Action: *The State Banking Commission intends to adopt rules which define certain terms and practices and which establish certain policies and compliance requirements for mortgage brokers and bankers.*

Comment Procedures: *Any written comments should be forwarded to Daniel E. Garner, Agency Legal Specialist, 4309 Mail Service Center, Raleigh, NC 27699-4309.*

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 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rules cited as 11 NCAC 10 .1113-.1114, .1209, amend the rule cited as 11 NCAC 10 .1206, and repeal the rule cited as 11 NCAC 10 .1203. Notice of Rule-making Proceedings was published in the Register on December 3, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: February 22, 2002

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, Raleigh, NC

Reason for Proposed Action: These are needed in order to be NAIC compliant.

Comment Procedures: Written comments may be sent to Charles Swindell, NC Department of Insurance, Property & Casualty Division, PO Box 26387, Raleigh, NC 27611. Written statements will be received through March 4, 2002.

Fiscal Impact

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

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

SECTION .1100 – RATE FILINGS

11 NCAC 10 .1113 REFERENCE FILINGS

With the exception of flood insurance written in accordance with Federal Emergency Management Agency requirements, or with the requirements of any successor agency, rate filings, including loss costs multipliers, by reference are not permitted. Adoption of rates and loss costs that have been promulgated by a licensed bureau, licensed rating organization, licensed advisory organization, licensed joint underwriting association, or licensed reinsurance organization, of which the insurer is a member, subscriber, or service purchaser, are not deemed to be reference filings.

Authority: G.S. 58-2-40; 58-36-15; 58-36-65; 58-36-70; 58-36-100; 58-40-30; 58-41-50.

11 NCAC 10 .1114 TRANSMITTAL HEADER

All rate filings shall be accompanied by a transmittal header, which is available at the Department's Internet web site

(www.ncdoi.com), by writing the N.C. Department of Insurance, Property & Casualty Division, 430 N. Salisbury St., P.O. Box 26387, Raleigh, NC 27611, or by calling the Division at (919) 733-3368.

Authority G.S. 58-2-40; 58-40-30; 58-41-50.

SECTION .1200 – FORMS FILINGS

11 NCAC 10 .1203 LETTER OF TRANSMITTAL

Authority G.S. 58-9; 58-54; 58-124.17; 58-124.28; 58-131.34; 58-131.60; 58-148; 58-157; 58-180.2; 58-248.2; 58-248.40.

11 NCAC 10 .1206 COMMERCIAL LINES

All licensed insurance companies or any other licensed entity filing forms for coverages governed by G.S. 58, Articles 40 and 41 shall:

- (1) complete a transmittal header as prescribed in 11 NCAC 10 .1209;
(2) complete the Questionnaire as prescribed in 11 NCAC 10 .1207;
(3) if the filer is filing a modification to an existing form, provide a "side-by-side" comparison of the existing and modified forms and explain all broadenings and restrictions of coverage.

Authority G.S. 58-2-40; 58-3-150; 58-41-50.

11 NCAC 10 .1209 TRANSMITTAL HEADER

All form filings shall be accompanied by a transmittal header which is available at the Department's Internet web site (www.ncdoi.com), by writing the N.C. Department of Insurance, Property & Casualty Division, 430 N. Salisbury St., P.O. Box 26387, Raleigh, NC 27611, or by calling the Division at (919) 733-3368.

Authority G.S. 58-2-40; 58-3-150; 58-36-55; 58-45-45; 58-46-55.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rule cited as 13 NCAC 07A .0302. Notice of Rule-making Proceedings was published in the Register on November 1, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Written requests

PROPOSED RULES

for public hearing may be directed to Barbara A. Jackson, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601 until 5:00 p.m. on March 4, 2002.

None

CHAPTER 07 - OSHA

Reason for Proposed Action: The Department of Labor proposes to make permanent, the temporary rule 13 NCAC 07A .0302, that went into effect, December 1, 2001.

SUBCHAPTER 07A – GENERAL RULES AND OPERATIONAL PROCEDURES

Comment Procedures: Written comments directed to the attention of Barbara A. Jackson, North Carolina Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601 will be accepted until March 4, 2002.

SECTION .0300 - PROCEDURES

Fiscal Impact

- State
- Local
- Substantive (>\$5,000,000)

13 NCAC 07A .0302 COPIES AVAILABLE

Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this Chapter are available for public inspection by contacting the North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:

Referenced Materials	Available for Purchase From	Cost
29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$1/page requested
29 CFR 1910	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$27.00 each
29 CFR 1915; 29 CFR 1917	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
29 CFR 1926	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$22.00 each
29 CFR 1928	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
The above CFR Parts and other CFR Parts	U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 http://www.gpo.gov/	\$34.00/Part
ANSI/NFPA 101-1991	National Fire Protection Association 1 Battery arch Park Quincy, Massachusetts 02269 (617) 770-3000 http://www.nfpa.org/	From \$28.00 to \$74.00 per part. Contact source for specific cost information.
ANSI standards	American National Standards Institute 11 West 42 nd Street New York, New York 10036 (212) 642-4900 http://www.ansi.org/	Contact source for specific cost information.
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L'Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 http://www.gsa.gov/fssintro.htm	Contact source for specific cost information.
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health http://www.msha.gov/	Contact source for specific cost information.
Institute of Makers of Explosives (IME) Publications	1120 Nineteenth St. NW, Suite 310 Washington, DC 20036 (202) 429-9280 http://www.ime.org	No. 17 \$15.00 No. 20 \$10.00 Contact source for specific cost information.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0225, .0316. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: February 21, 2002

Time: 7:00 p.m.

Location: Nash Community College, 522 North Old Carriage Road, Rocky Mount, NC

Reason for Proposed Action: *The Pamlico-Tar River Foundation requested that Swift Creek (Edgecombe, Franklin, Nash, Vance and Warren Counties) in the Tar-Pamlico River Basin be reclassified to Outstanding Resource Waters (ORW). The purpose of this Rule change is to provide supplementary protection for the resources and quality of these waters. Water quality studies that were conducted in 1996 and 1997 indicated that only an approximately 14-mile segment of Swift Creek, which traverses from S.R. 1003 to S.R. 1004 in Nash County, has excellent water quality. In addition, other information from these studies combined with additional data revealed that this segment contains a number of important animal species. Within this segment, there are salamander, fish, insect, and mussel species that carry a variety of State and federal designations. In addition, this segment contains the Tar River spiny mussel, which is a federally and State listed endangered species. Therefore, based on the water quality and existing resource values, this segment of the Swift Creek qualifies for the ORW designation. The remainder of the Swift Creek watershed also contains several important resource values. This area contains all but two of the species previously discussed plus additional fish, crayfish, mussel and plant species that carry varying State and federal designations. In addition, the red cockaded woodpecker and dwarf wedgemussel are federally (and in the case of the woodpecker also State) listed as endangered. Furthermore, three natural heritage areas of regional or state significance, four natural communities recognized by the Natural Heritage Program, a wading bird rookery, and a natural area registered with the Natural Heritage Program are located in this area. This entire watershed is recognized for its exceptional State and national ecological significance via the above-mentioned species and State designated natural area. Therefore, in addition to providing the ORW designation to the 14-mile segment of Swift Creek with excellent water quality, it is proposed that the ORW special protection measures, or management strategy, be implemented throughout the entire watershed. This proposal will provide a higher level of protection of the excellent water quality in the 14-mile segment and the outstanding resource values found throughout the watershed. Thus, the 14-mile segment is proposed to receive both the ORW classification and the ORW management strategy,*

and the remainder of the watershed is proposed to receive the ORW management strategy without the ORW classification. Nearly 207 river miles exist within the area proposed for reclassification. If reclassified, regulations that affect development activities, new and expansions of wastewater dischargers, new landfills, and DOT activities would apply. However, there are no proposed discharges and no proposed significant development according to staff of local governments with jurisdiction in portions of the proposed reclassification area (Whitakers, Leggett, Rocky Mount, Henderson, Red Oak, Castalia, Dortches, and Centerville). Forestry, animal, and agricultural practices will not be affected. Please also note that all new activities within 50 feet of NSW waters in the Tar-Pamlico River Basin are subject to the currently existing Tar-Pamlico Basin Riparian Buffer Protection rules.

Comment Procedures: *The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. You may attend the public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. You may also submit written comments, data or other relevant information by March 21, 2002. Written comments may be submitted to: Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, elizabeth.kountis@ncmail.net, or by calling Elizabeth Kountis at (919) 733-5083 extension 369.*

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B – SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;

- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

- (1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.
- (2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result

in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director
DENR/Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 02H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect

- the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
- (A) North and South Fowler Creeks,
 - (B) Green and Norton Mill Creeks,
 - (C) Cane Creek,
 - (D) Ammons Branch,
 - (E) Glade Creek, and
 - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
- (A) Ivy Creek,
 - (B) Rock Creek, and
 - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
 - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;
 - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
- (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH₃-N = 2 mg/1;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
 - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that

shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area

defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackelford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin)

including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
 - (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
 - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH₃-N = 2 mg/l;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).

- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5)]: all undesignated waterbodies that are located within the Swift Creek watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found throughout the watershed.

Authority G.S. 143-214.1.

SECTION .0300 – ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0316 TAR-PAMLICO RIVER BASIN

- (a) The schedule may be inspected at the following places:
 - (1) Clerk of Court:
 - Beaufort County
 - Dare County
 - Edgecombe County
 - Franklin County
 - Granville County
 - Halifax County
 - Hyde County
 - Martin County
 - Nash County
 - Pamlico County

Person County
 Pitt County
 Vance County
 Warren County
 Washington County
 Wilson County

(2) North Carolina Department of Environment, Health, and Natural Resources:

- (A) Raleigh Regional Office
 3800 Barrett Drive
 Raleigh, North Carolina
- (B) Washington Regional Office
 943 Washington Square Mall
 Washington, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which shall be classified "SC."

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) January 1, 1996;
- (14) September 1, 1996;
- (15) April 1, 2003.

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

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective August 3, 1992 with the reclassification of all water

supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective January 1, 1996 with the reclassification of Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103-(16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective September 1, 1996 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with an Index No. of 29-25.5.

(k) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 2003 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the remainder of the creek's watershed to include only the ORW management strategy as represented by "+". The "+" symbol as used in this Paragraph means that all undesignated waterbodies that are located within the Swift Creek watershed shall comply with Paragraph (c) of Rule .0225 of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the watershed.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0303. Notice of Rule-making Proceedings was published in the Register on October 15, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: May 2, 2002

Time: 6:30 p.m.

Location: Swain County Administrative Building (courtroom), 101 Mitchell Street, Bryson City, NC

**SUBCHAPTER 02B – SURFACE WATER AND
WETLAND STANDARDS**

**SECTION .0300 – ASSIGNMENT OF STREAM
CLASSIFICATIONS**

**15A NCAC 02B .0303 LITTLE TENN RIVER BASIN
AND SAVANNAH RIVER DRAINAGE AREA**

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
Clay County
Graham County
Jackson County
Macon County
Swain County
Transylvania County
 - (2) North Carolina Department of Environment and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina.
- (b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."
- (c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:
- (1) February 16, 1977;
 - (2) March 1, 1977;
 - (3) July 13, 1980;
 - (4) February 1, 1986;
 - (5) October 1, 1987;
 - (6) March 1, 1989;
 - (7) January 1, 1990;
 - (8) July 1, 1990;
 - (9) August 1, 1990;
 - (10) March 1, 1991;
 - (11) August 3, 1992;
 - (12) February 1, 1993;
 - (13) August 1, 1994;
 - (14) September 1, 1996;
 - (15) August 1, 1998;
 - (16) August 12000;
 - (17) April 1, 2003.
- (d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:
- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
 - (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear

Reason for Proposed Action: Asheville Regional Office DWQ staff requested reclassification of a section of the Little Tennessee River (Swain and Macon Counties; Little Tennessee River Basin) from Class C to Class B (Primary Recreation). This proposed reclassification consists of the main stem of the Little Tennessee River from approximately 0.4 miles upstream of the Highway 28 bridge (near Iotla, NC) to the Nantahala River Arm of Fontana Lake. Nearly 25 river miles are proposed to be reclassified. The purpose of this Rule change is to protect the existing waters' primary recreation uses. Primary recreation means swimming, skin diving, water skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. The entire section of the main stem of the Little Tennessee River proposed for reclassification is used for swimming as well as canoeing and kayaking. There are a number of access points along this section of the river. Usage gets progressively heavier as one travels the segment downstream (towards Fontana Lake). The portion of the river inundated by the lake is used for water skiing as well as swimming. Water quality studies conducted in May 2001 show that the waters proposed to be reclassified meet Class B criteria. If reclassified, new NPDES wastewater discharges to these waters will need to comply with reliability standards; these standards require facilities to insure continued treatment of wastewater during instances of power failure. In addition, new NPDES permitted discharges that contain fecal coliform will be required to have a fecal limit. However, there are no current dischargers in the waters proposed to be reclassified. In addition, there is only one planned discharger into the proposed waters that already meets Class B requirements. Forestry, animal, mining, development, and farming practices will not be affected.

Comment Procedures: The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. You may attend the public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. You may also submit written comments, data or other relevant information by May 30, 2002. Written comments may be submitted to: Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, elizabeth.kountis@ncmail.net, or by calling Elizabeth Kountis at (919) 733-5083 extension 369.

Fiscal Impact

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

PROPOSED RULES

Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

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

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and

- (2) the Tuckasegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective September 1, 1996 as follows:

- (1) Deep Creek from the Great Smokey Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and
- (2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

(l) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2-79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.

(n) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14Q .0101-.0110, amend the rules cited as 21 NCAC 14B .0603; 14G .0103; 14J .0208; 14P .0105-

.0106, .0108, .0116, and repeal the rule cited as 21 NCAC 14K .0106. Notice of Rule-making Proceedings was published in the Register on November 1, 2001 and December 3, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 25, 2002

Time: 9:00 a.m.

Location: NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC

Reason for Proposed Action: To update the school curriculum, amend civil penalties, and establish rules for the continuing education program for teachers of cosmetology.

Comment Procedures: Written comments concerning this rule-making action must be submitted by March 4, 2002 to Dee Williams, Rule-making Coordinator, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609.

Fiscal Impact

- State
Local 10 NCAC 14P .0106, .0108
Substantive (>\$5,000,000)
None 10 NCAC 14B .0603; 14G .0103; 14J .0208, 14K .0106; 14P .0105, .0116; 14Q .0101-.0110

SUBCHAPTER 14B – RULE-MAKING PROCEDURES

SECTION .0600 – FEES

21 NCAC 14B .0603 POSTAGE AND HANDLING

There will be a five dollar (\$5.00) charge for postage and handling for all mailings.

Authority G.S. 12-3.1; 150-11(1).

SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS

SECTION .0100 – PERMANENT FILES

21 NCAC 14G .0103 SPACE REQUIREMENTS

- (a) The Cosmetic Art Board shall issue letters of approval only to cosmetology schools that have at least 2800 square feet of inside floor space for 20 stations or 4200 square feet of inside floor space for 30 stations located within the same building . An additional 140 square feet of floor space shall be required for each station above 20 stations, up to and including a total of 30 stations. Thereafter, an additional 40 square feet shall be required for each station in excess of 30 stations. For purpose of this Rule, the day and night classes shall be counted as separate enrollments. A school may have a recitation room located in an adjacent building or another building within 500 feet of the main cosmetology building.
(b) Each cosmetology school must have no less than 20 hairdressing stations, arranged to accommodate not less than 20 students and arranged so that the course of study and training

cosmetology, as prescribed in 21 NCAC 14J .0306, may be given. All stations must be numbered numerically.

(c) Cosmetology schools must have a beginner department containing sufficient space to comfortably accommodate at least 10 students and having at least 40 inches between mannequins.

(d) The Board shall issue a letter of approval only to manicurist schools that have at least 1,000 square feet of inside floor space located within the same building.

(e) Manicurist schools with 1,000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 40 square feet of inside floor space must be provided.

(f) Manicurist schools must have ten manicurist tables and chairs a minimum of two feet apart, side to side, arranged to comfortably accommodate ten students.

(g) The Board shall issue a letter of approval only to esthetician schools that have at least 1,500 square feet of inside floor space located within the same building.

(h) Esthetician schools with 1,500 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided.

(i) Schools combining both manicuring and esthetics training programs with 1,500 feet of inside floor space shall enroll no more than a total of 20 students at one time and for each student enrolled in addition to 20 students, 50 square fee of inside floor space must be provided. Equipment requirements for both manicurist schools and esthetician schools will be followed.

Authority G.S. 88B-4.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0200 - ADVANCED DEPARTMENT

21 NCAC 14J .0208 INTERNSHIPS

Schools and selected cosmetic art shops desiring to implement an internship program will follow these requirements:

- (1) Schools wishing to participate in an internship program must notify the Board of intent to implement a program before credit for an internship can be granted. Cosmetic art shops and student selection criteria must be submitted along with the notification.
(2) Schools will report to the Board all cosmetic art shops contracted and students selected to participate in the program.
(3) Internships may be arranged in various time frames but shall never exceed 10% of a student's training period.
(4) Credit for an internship shall be granted upon submission of student hours verification based on a daily attendance record. Hours must be recorded on a form approved by the school.
(5) Students may be assigned a variety of duties, but client services are restricted. Cosmetology students may only provide shampoo services, manicurist students may only remove nail polish and esthetician students may only drape and prep clients. Cosmetic art shop violation of restrictions or school requirements may

PROPOSED RULES

result in the termination of the internship contract and the possible loss of student training hours.

- (6) Students must follow all cosmetic art shop employee rules and regulations. Violations of cosmetic art shop rules or any misconduct may result in dismissal of the intern or loss of training hours.
- (7) A licensed teacher need not be in attendance during this internship.
- (8) Students participating in the program shall not receive compensation for duties performed in the cosmetic art shop.

Authority G.S. 88B-4.

SUBCHAPTER 14K - MANICURIST CURRICULUM

SECTION .0100 - MANICURIST CURRICULUM

21 NCAC 14K .0106 HOURS OF COURSE WORK REQUIRED FOR MANICURIST ONLY

Authority G.S. 88-8; 88-23.

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art salon with an apprentice license or a temporary permit without direct supervision is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

Authority G.S. 88B-4; 88B-21; 88B- 23(a); 88B-24: 88B-29.

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00

- (3) 3rd offense \$1,000.00
- (b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- (1) 1st offense \$250.00
- (2) 2nd offense \$500.00
- (3) 3rd offense \$1,000.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:

- (1) 1st offense \$300.00
- (2) 2nd offense \$500.00
- (3) 3rd offense \$1,000.00

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- (1) 1st offense \$300.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

(d) The presumptive civil penalty for submitting false or fraudulent documents:

- (1) 1st offense \$500.00(2)
- 2nd offense \$800.00
- (3) 3rd offense \$1,000.00

(e) The presumptive civil penalty for refusing to present photographic identification:

- (1) 1st offense \$100.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement:

- (1) 1st offense warning(\$300.00)
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license.

- (1) 1st offense warning(\$300.00)
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation:

- (1) 1st offense \$500.00
- (2) 2nd offense \$800.00
- (3) 3rd offense \$1,000.00

(i) The presumptive civil penalty for the illegal use of MMA in a cosmetic art shop or school is:

- (1) 1st offense \$300.00
- (2) 2nd offense \$500.00
- (3) 3rd offense \$1,000.00

Authority G.S. 88B-4; 88B-24; 88B-29.

21 NCAC 14P .0116 CIVIL PENALTY PROCEDURES

(a) Citations. The Board, through its duly authorized representatives, shall issue a citation with respect to any violation for which a civil penalty may be assessed. Each citation shall be in writing and shall describe the nature of the violation, including a reference to the specific provision alleged to have been violated. The civil penalty, if any, shall attach at the time the citation is written. The citation shall include an order to correct any condition or violation which lends itself to corrections, as determined by the Board.

(b) Correction of Violation. Any licensee who has been issued a warning citation must present written proof satisfactory to the Board, or its executive director, that the violation has been corrected. This provision applies only to a licensee's first violation in any one year period for a violation with a 1st offense warning penalty. Proof of correction shall be presented to the Board, through its executive director, within 30 days of the date the warning citation was issued. The Board may extend for a reasonable period, the time within which to correct the warning citation upon the showing of good cause. Notices of correction filed after the prescribed date shall not be acceptable and the civil penalty shall be paid.

(c) Contested Case. Persons to whom a notice of violation or a citation is issued and a civil penalty assessed, may contest the civil penalty by filing written notice with the Board. The Board shall institute a contested case by sending a notice of hearing pursuant to G.S. 150B, Article 3A. The issuance of notice of hearing shall stay the civil penalty until the Board renders a final agency decision in the contested case.

(d) Final Agency Decision. The Board, after the hearing has been concluded, may affirm, reduce, or dismiss the charges filed in the notice of hearing or any penalties assessed. In no event shall the civil penalty be increased.

(e) Failure to File. If no written notice contesting the civil penalty is filed as set forth in Paragraph (c) of this Rule, the civil penalty becomes a final agency decision.

(f) Any offender who has not committed a previously cited offense for three consecutive years, shall have their record of the specific offense cleared. Any subsequent violation would be treated as a first offense.

Authority G.S. 88B-4; 88B-29.

SUBCHAPTER 14Q – CONTINUING EDUCATION

SECTION .0100 – TEACHER CONTINUING EDUCATION

21 NCAC 14Q .0101 TEACHER CONTINUING EDUCATION

(a) Teacher's continuing education (CE) programs shall be approved by the NC State Board of Cosmetic Art Examiners (Board), having met the criteria established by the Board. Each program shall be conducted and monitored by one of the following statewide organizations in conjunction with the Board:

- (1) National Cosmetology Association of North Carolina;
- (2) High School Cosmetology Educators of North Carolina;
- (3) NC State Beauticians and Cosmetologists Association;

- (4) Cosmetologist Instructors Association of the NC Community College System;
- (5) NC Private School Owners Association; or
- (6) NC Aestheticians Association.

Note: If a provider is associated with or a member of any of the preceding associations, they may be approved.

(b) Any other Board approved statewide group or association who can present a satisfactory program to the Board, may be eligible to conduct such a program, provided they can demonstrate proper control procedures.

(c) The Continuing Education Program shall meet the following criteria for approval:

- (1) all seminars must include at least 50% of subject matter in the cosmetic arts and/or teacher training techniques. Esthetician teachers and manicurist teachers must complete CE only in that area in which they are licensed. CE must not promote a particular system or product;
- (2) all seminars shall be monitored by the responsible organization including signing in and out of participants to assure the presence of participants for the required contact hours; and
- (3) all organizations/providers shall present to the Board Curriculum Committee, no earlier than July 1, 2002 and no later than August 30, 2002, a program outline which shall include, but may not be limited to, the following:
 - (A) Date;
 - (B) Time;
 - (C) Place;
 - (D) Instructors Name(s);
 - (E) Course outline including lesson plans;
 - (F) List of monitors; and
 - (G) Fees.

Programs approved by the Curriculum Committee will be submitted to the Board during their October meeting for full approval. Programs will be approved through September 30, 2003. The next CE submission period will be July 1 – August 30, 2002 with programs being effective October 1, 2002 – September 30, 2003.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0102 ATTENDANCE VERIFICATION

All providers shall complete an attendance verification form, approved and provided by the Board, verifying participant attendance and must be submitted in a format approved by the Board.

- (1) The monitor shall verify the participants' attendance and signature on the verification form.
- (2) Each provider shall mail completed forms to the Board Operations Officer.
- (3) The forms shall be kept on record with the Board as verification that the participant has met the Continuing Education requirements.
- (4) All participants shall receive from the Board, a Continuing Education Unit (CEU) certificate proving verification.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0103 CERTIFICATING AGENT

The Board will serve as the certificating agent providing CEU certificates for participants when the following conditions are met:

- (1) The program submitted by any of the program producing associations/providers must be fully approved by the Board. Upon notification of approval, the association/provider must submit a five dollar (\$5.00) postage/handling/copying fee no less than 30 days prior to a proposed seminar date. Failure to meet this requirement will result in CE cancellation;
- (2) All attendance verification forms and monitor forms will be sent to the appropriate association/provider at least two weeks prior to the start of the seminar(s);
- (3) All attendance verification forms must be forwarded to the Board before the certificating process can begin. Certificates will be mailed to the participants;
- (4) The postage/handling/copying fee shall include:
 - (a) a CEU certificate for participant;
 - (b) attendance verification forms, seminar monitor forms; and
 - (c) permanent transcripts developed and maintained on each participant. Retrieval of transcripts by participants will be subject to a five dollar (\$5.00) postage/handling fee;
- (5) Attendance verification forms shall be necessary for all participants in order to complete the certificating process.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0104 PROGRAM SITES

Each association/provider shall submit to the Board Curriculum Committee by August 30, 2002, all program sites. The Board shall be notified of any changes in sites during the year the programs are ongoing.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0105 GENERAL PROGRAM FORMAT, TIME FRAME, SPACE

- (a) The program shall consist of no more than six clock hours per day. This does not include breaks and lunch periods.
- (b) The program shall include at least 50% of subject matter in the cosmetic arts and/or teacher training techniques. No promotion of, or selling of products/systems can take place.
- (c) All associations/providers shall adhere to the approved program format.
- (d) Any change in the approved program format must receive approval by the Board Executive Director.
- (e) If the program for any reason is late starting, the ending time shall be extended accordingly.
- (f) There shall be no early dismissals.

- (g) Adequate space shall be provided so that each attendee shall be able to see and hear all segments of the program.
- (h) Comfortable chairs shall be provided.
- (i) Smoking shall be curtailed while the program is in session. Smoking shall take place only during breaks and lunch periods and only in designated areas.
- (j) Regular cosmetic art school classes shall not take place during the same time as the CE Program is taking place.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0106 INSTRUCTORS AND MONITORS OF CONTINUING EDUCATION PROGRAMS

Each association/provider shall by August 30, 2002, submit to the Board a list of instructors and monitors for the following fiscal years' program. For programs limited to 15 students or less, the instructor may also serve as the program monitor.

- (1) Instructors shall be licensed cosmetic art instructors, or current/past officers of any sponsoring association as listed in Rule .0101 Subparagraphs (a)(1)-(6) of this Section. Any deviation from this list must receive approval by the Board.
- (2) Instructors shall not receive CEU credit for any Continuing Education Program they teach.
- (3) A monitor shall be on duty at all times while the program is ongoing.
- (4) Monitors shall see that all attendees sign a check in and check out form for the AM and PM sessions.
- (5) It shall be the duty of the monitor to see that order is maintained at all times and that the attendance verification forms are properly completed.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0107 POSTAGE/HANDLING FEE

Each association/provider must submit a nonrefundable five dollar (\$5.00) fee per seminar to cover administrative certificating and verification costs. This includes the costs of documentation copies, handling and postage.

Authority G.S. 88B.

21 NCAC 14Q .0108 PROOF OF ATTENDANCE

After completion of the program and within 10 working days, monitor forms and all attendance verification forms must be sent to the Board. The Board must also be notified in writing of the cancellation of any seminar within 10 working days following the proposed seminar date.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0109 BOARD TO OBSERVE PROGRAM

The Board or its designated agents may observe any Continuing Education Program at any time.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0110 VIOLATIONS

Any sponsor/provider, having been cited by the Board for two violations of any CE program procedures will be subject to be called before the Board. If the Board finds the violation(s) to be sufficient cause so as to adversely affect the program, the provider, depending on the severity of the charges, may:

- (1) receive a verbal reprimand and warning that if the situation continues, the provider will be subject to either Items (2), (3), or (4) of this Rule; or
(2) be disqualified from conducting any Continuing Education Program for a period of time determined by the Board; or
(3) be disqualified from conducting any further Continuing Education Program for the remainder of the year; or
(4) be disqualified from ever conducting any further Continuing Education Program.

Note - The following policy still remains in effect for those teachers working within an esthetics program.

Prior to renewal of a teacher's license, the teacher shall complete a minimum of 16 hours of CE approved by the Board every two-year cycle. For those cosmetic art teachers teaching in an esthetics program, of the total 16 CE hours they are required to complete, a minimum of eight hours must be completed in either a basic or an advanced esthetician seminar. The Board recommends completing all 16 hours of CE within the skin care subject area, however, only eight hours are actually required.

Authority G.S. 88B-4, 88B-21(e).

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Engineers and Surveyors intends to amend the rules cited as 21 NCAC 56 .0501-.0502, .0505, .0602, .0606, .0701, .0804, .0901, .1103, .1605-.1608, .1708, .1713, and repeal the rule cited as 21 NCAC 56 .1609. Notice of Rule-making Proceedings was published in the Register on December 3, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: February 28, 2002

Time: 9:00 a.m.

Location: Board of Examiners for Engineers and Surveyors, 310 W. Millbrook Road, Raleigh, NC

Reason for Proposed Action: Clarify language in .0501-.0502, .0602, .0701, .1708, & .1713; additional comity application approvals in .0502, .0602; increase annual license renewal in .0505, .0606, .0804; require notice of change of resident professional in .0901; allow for digital signatures and language revisions in .1103; revise topo standards in .1605-.1608 and repeal .1609 to incorporate into .1606.

Comment Procedures: Submit comments in writing to David S. Tuttle, Board Counsel, NC Board of Examiners for Engineers and Surveyors, 310 W. Millbrook Road, Raleigh, NC 27609. Written statements will be received through March 4, 2002. Oral statements will be accepted at the public hearing.

Fiscal Impact

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

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

SECTION .0500 - PROFESSIONAL ENGINEER

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Program of Four or more Years Approved by the Board is defined as a program that has been accredited by the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy.
(2) Engineering or Related Science Curriculum of Four or more Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
(3) Equivalent Education Satisfactory to the Board:
(A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET shall be considered equivalent to an engineering program of four or more years approved by the Board.
(B) A bachelor's degree in Engineering Technology shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
(C) An associate degree in an engineering related curriculum with an additional two years of progressive engineering

experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.

(D) A high school diploma with an additional four years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.

(E) Foreign degrees shall be considered only after receipt of an evaluation from the Foreign Engineering Education Evaluation Program (FEEEP) of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to one of the education categories in Subparagraphs (a)(1)-(3) of this Rule.

(b) Experience:

(1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.

(2) Required Experience. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.

(3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the board that the applicant may be competent to practice engineering.

(4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board may give credit for experience in the following areas of work:

(A) Graduate schooling or research in an approved engineering program resulting in award of an advanced engineering degree, one year for each such degree - maximum two years;

(B) Progressive land surveying - maximum two years;

(C) Teaching of engineering subjects at the university level in an approved engineering program offering a four year or more degree approved by the Board - maximum two years.

The Board, however, shall not accept combinations, restricted only to the categories noted above, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an approved engineering program offering a four year or more degree approved by the Board, may request waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

(5) Other Experience is Considered if it is:

(A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year;

(B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

Authority G.S. 89C-10; 89C-13.

**21 NCAC 56 .0502 APPLICATION PROCEDURE:
INDIVIDUAL**

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made at the Board address.

(c) Applicable Forms:

(1) Engineering Intern Form. This form requires the applicant to set forth personal history, educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering program approved by the Board as follows:

(A) Students graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered.

(B) Graduates with less than two years since graduation.

(2) Professional Engineer Form:

(A) All persons, including comity applicants and graduates of an engineering program approved by the Board with more than two years progressive engineering experience, shall apply for licensure by using the Professional Engineer form. The submission of this form shall signify that the applicant seeks licensure, and will result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photographic quality portrait that is adequate for current clear identification purposes is required.

(B) Persons who have previously completed the fundamentals examination by use of the Engineering Intern Form shall submit the Professional Engineer Form to request licensure when qualified to take the final eight-hour examination.

(3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement the initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

(4) Reference Forms:

(A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are

familiar with the applicant's work, character and reputation. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be Professional Engineers.

(B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied them by the applicant.

(C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.

(D) The reference forms shall be received by the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

(1) Engineering Intern Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the engineering intern form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the application fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of engineering examination are payable with the applicant's subsequent application for licensure as a Professional Engineer using the Professional Engineer form.

(2) Professional Engineer Form. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form are payable with the filing of the application.

(3) Comity. The licensure fee of one hundred dollars(\$100.00) is payable with the filing of the application.

(4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record is accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, is administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action is reported to the Board for final approval.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of this Section by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer." A "Model Law Engineer" application is administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action is reported to the Board for final approval.

(g) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Licensure. An annual renewal fee of fifty dollars(\$50.00) for certificates of licensure for Professional Engineers shall be payable to the Board. A late fee is applied in accordance with G.S. 89C-17. The Board shall send to each licensed Professional Engineer a form which requires the licensee to provide the Board with both the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Engineering Intern Certificate. The Engineering Intern certificate does not expire and, therefore, does not have to be renewed.

Authority G.S. 89C-10; 89C-17.

SECTION .0600 - PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Professional Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made at the Board address.

(c) Application Form. All persons applying to be licensed as a Professional Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth personal background, plus educational background, land

surveying experience, and references. A passport-type photographic quality portrait that is adequate for current clear identification purposes is required also.

(d) Supplemental Form. Persons who initially applied for licensure as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of land surveying, must supplement their initial applications upon ultimately applying for the second examination. The applicant must supplement the initial application by using the supplemental form, which requires the listing of land surveying experience from the date of the initial application to the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

(1) Persons applying to take the examination for the fundamentals of land surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.

(2) Persons applying for the fundamentals of land surveying examination must submit three references, one of which must be a Professional Land Surveyor. Persons applying for the principles and practice examination must submit five references, two of which must be Professional Land Surveyors.

(3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.

(4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's land surveying experience, character and reputation.

(5) The reference forms shall be received by the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

(1) Regular. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon examination, experience, character and exhibit are payable with the filing of the application.

(2) Comity. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon comity are payable with the filing of the application.

(3) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(g) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record is accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, is administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action is reported to the Board for final approval.

(h) Personal Interview. During the application process, the applicant may be interviewed by Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Land Surveyor Licensure. An annual renewal fee of fifty dollars (\$50.00) for certificates of licensure for Professional Land Surveyors shall be payable to the Board. A late fee is applied in accordance with G.S. 89C-17. The Board will send each Professional Land Surveyor a form which requires the licensee to provide to the Board the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Surveyor Intern Certificate. The Surveyor Intern certificate does not expire and, therefore, does not have to be renewed.

Authority G.S. 89C-17.

SECTION .0700 - STANDARDS OF PROFESSIONAL CONDUCT

21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the following rules of professional conduct are promulgated in accordance with G.S. 89C-20 and shall be binding upon every person holding a certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of G.S. 89C of the General Statutes are charged with having knowledge of the existence of the rules of professional conduct, and shall be deemed to be familiar with their several provisions and to understand them.

(b) The licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at all times recognize the primary obligation to protect the public in the performance of the professional duties. If the licensee's

engineering or land surveying judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the licensee shall inform the employer, the contractor and the appropriate regulatory agency of the possible consequences of the situation.

(c) The licensee shall perform services only in areas of the licensee's competence and:

(1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved.

(2) May accept an assignment or project requiring education or experience outside of the licensee's own field of competence, but only to the extent that the services are restricted to those portions or disciplines of the project in which the licensee is qualified. All other portions or disciplines of such project shall be performed by associates, consultants, or employees who are licensed and competent in those portions or disciplines.

(3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing with subject matter for which the licensee lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided that individual is qualified or licensed to provide such service and provided the licensee reviews the work. The licensee may affix the seal and signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible.

(d) The licensee shall issue public statements only in an objective and truthful manner and:

(1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony.

(2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical

- (3) competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony.
- (3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the existence of any pecuniary interest the licensee may have in the instant matters.
- (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer or land surveyor, nor indiscriminately criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes statements without valid basis or cause or that are not objective and truthful or that fail to include all relevant and pertinent information. If the licensee believes that another engineer or land surveyor is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Board of Examiners.
- (e) The licensee shall avoid conflicts of interest and:
 - (1) Shall promptly inform the employer or client and any reviewing agency of any business association, interests, or circumstances which could influence judgment or the quality of services.
 - (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
 - (3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the client or employer in connection with work for which the licensee is responsible.
 - (5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by the licensee or the licensee's organization in private engineering and land surveying practices.
 - (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the licensee's organization serves as a member.
- (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The licensee shall solicit or accept work only on the basis of qualifications and:
 - (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
 - (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
 - (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S.C. 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S.C. 541 et seq.).
 - (4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall only report educational qualifications when a degree or certificate was awarded, unless it is clearly stated that no degree or certificate was awarded. The licensee shall not misrepresent degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.
- (g) The Licensee shall perform services in an ethical and lawful manner and:
 - (1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a business venture by any person or firm which the licensee knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is not properly licensed.
 - (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Engineering and Land Surveying Act, shall present such information to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence

from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board.

(h) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, or surrendered as a result of disciplinary action by another jurisdiction shall be subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

Authority G.S. 89C-17; 89C-20.

SECTION .0800 – FIRM REGISTRATION

21 NCAC 56 .0804 ANNUAL RENEWAL

(a) Renewal. The certificate of licensure for a professional corporation, limited liability company or business firm shall be renewed annually.

(b) Expiration. The certificate of licensure shall expire on the last day of June following its issuance by the Board and shall become invalid on that date unless renewed.

(c) Written Application. Upon written application on a renewal form prescribed by the Board accompanied by the prescribed fee of fifty dollars (\$50.00), the Board shall renew the certificate of licensure providing that the firm has complied with all rules of the Board and applicable General Statutes of North Carolina. The form shall be mailed to all registrants in good standing no later than June 1st. A late fee is applied in accordance with G.S. 89C-17. The licensed entity shall give notice to the Board of a change of business address within 30 days of the change.

(d) Failure of a firm to renew its certificate of licensure within one year of the expiration date shall require the firm to submit a new application for a new certificate of licensure in accordance with all requirements of these Rules and of all applicable statutes.

Authority G.S. 55B-11; 57C-2-01; 89C-10; 89C-14; 89C-17; 89C-24.

**SECTION .0900 – BUSINESS ORGANIZATIONS:
GENERAL**

21 NCAC 56 .0901 OFFICES

(a) Professional Engineering Services. Every firm, partnership, corporation or limited liability company which performs or offers to perform engineering services in the State of North Carolina shall have a resident Professional Engineer in responsible charge in each separate office in which professional engineering services are performed or offered to be performed.

(b) Land Surveying Services. Every firm, partnership, corporation or limited liability company which performs or offers to perform land surveying services in the State of North Carolina shall have a resident Professional Land Surveyor in responsible charge in each separate office in which land surveying services are performed or offered to be performed.

(c) Resident. A resident Professional Engineer or Professional Land Surveyor as used in this Rule, means a licensee who spends a majority of the licensee's normal working time in said place of business. Such time shall not be less than a majority of the operating hours of the business. A Professional Engineer or

Professional Land Surveyor shall be the resident licensee at only one place of business at one time unless each business is at least one-third owned by the resident professional and is specifically approved by the Board after a determination that the businesses are integrated in operation, ownership, office location and that the licensee will be in responsible charge of the professional services.

(d) No firm, partnership, corporation or limited liability company shall practice, or offer to practice, or market either land surveying or engineering unless there is a licensed resident for that service in responsible charge at that said place of business. Advertisements, signs, letterheads, business cards, directories, or any other form of representation shall avoid any reference to any service that cannot be provided under the responsible charge of a properly qualified resident professional. The licensed entity shall give notice to the Board of a change of resident professional within 30 days after the change and shall not practice, or offer to practice, or market the professional service during any period of time without a resident professional.

Authority G.S. 57C-2-01; 89C-10; 89C-24.

SECTION .1100 - SEAL

21 NCAC 56 .1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification of Final Drawings. Drawings or maps not conforming to Paragraph (c) of this subsection shall conform to the following:

- (1) Certification is required on reproducible or original drawings;
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to a plan sheet or map;
- (3) The licensee's written signature must be placed over, or near, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) All sheets of engineering and surveying drawings must be sealed; ~~and~~
- (6) The name and address of the licensee's firm shall be included on each sheet of engineering drawings. For surveys, the licensee's name and address shall be included on the first sheet of the survey or title sheet; and
- (7) Any revision on a drawing after a licensee's certification is affixed shall be noted and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(b) Certification of Specifications and Reports. All specifications, reports, or other documents, including letter reports and calculations, not conforming to Paragraph (c) of this Rule shall conform to the following:

- (1) Certification is required on original specifications, reports, or other documents, including letter reports and calculations;
- (2) The seal may be a rubber stamp, or other facsimile;

- (3) The licensee's written signature must be placed over, or near, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document; ~~and~~
- (5) The title sheet of engineering specifications or other reports must be sealed and bear the name and address of the licensee's firm. The title sheet of any survey report or written description of property shall include the name and address of the Professional Land Surveyor; and
- (6) Any revision on a drawing after a licensee's certification is affixed shall be noted and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(c) Exceptions to Required Certification. The seal of a licensee on a map, drawing, plan, specification, plat, document, or report shall signify that it is the final work of the licensee unless the work is stamped or clearly marked substantially as follows so as to put the public on notice not to use as a final product, in which case certification is optional:

- (1) "Preliminary - Do not use for construction".
- (2) "Progress Drawings - Do not use for construction".
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales".
- (4) "Final Drawing - Not released for construction".
- (5) "Final Drawing - For Review Purposes Only".
- (6) "Not a Certified Document – This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document shall not be considered a certified document".
- (7) "Not a Certified Document as to the Original Document but Only as to the Revisions - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document is only certified as to the revisions".

(d) Electronically transmitted documents. Documents, including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (e). After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of properly certified documents are not subject to the requirements of this Paragraph. The electronic transmission of CAD, vector or other files subject to easy editing are subject to the requirements of this Paragraph.

(e) Documents to be electronically transmitted that are signed using a digital signature, shall contain the authentication

procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(f) A digital signature that uses a process approved by the Board will be conclusive that it meets the criteria set forth in Subparagraphs(e)(1) through (e)(4) of this Rule. The licensee shall confirm that if another process is used, that it meets the criteria.

Authority G.S. 89C-10; 89C-16.

SECTION .1600 - STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

21 NCAC 56 .1605 CLASSIFICATION OF VERTICAL CONTROL SURVEYS

(a) General. Vertical control surveys are defined as measurements taken by surveying methods to determine elevation with respect to vertical datum, usually National Geodetic Vertical Datum of 1929 (NGVD29) or North American Vertical Datum of 1988 (NAVD88). For the purpose of specifying minimum allowable surveying standards, three general classifications of vertical control surveys are established.

(b) Urban and suburban vertical control surveys. (Class A). Urban and suburban vertical control surveys include lands which lie within or adjoining a town or city. For Class A vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.

(c) Other vertical control surveys (Class B). Other vertical control surveys include all lands which are not covered by Class A as described in Paragraphs (a) and (b) of this Rule. For Class B vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.20 times the square root of the number of miles run from the reference datum.

(d) Trigonometric vertical control surveys (Class C). Trigonometric vertical control surveys can be used for vertical control for aerial and topographic mapping. The vertical error in feet shall not exceed 0.3 times the square root of the number of miles run from the reference datum.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1606 SPECIFICATIONS FOR TOPOGRAPHIC AND PLANIMETRIC MAPPING, INCLUDING GROUND, AIRBORNE, AND SPACEBORNE SURVEYS

- (a) General.
 - (1) Topographic surveys are defined as surveys that have as their major purpose the determination of the configuration (relief) of

PROPOSED RULES

- (2) Planimetric mapping is defined as producing a map that presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief in measurable form.
- (3) Airborne and spaceborne surveys are defined as the use of photogrammetry, LIDAR, IFSAR, or other similar measurement technologies for obtaining reliable information about physical objects and the environment, including terrain surface, through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. Minimum allowable photogrammetric production procedures and standards are hereby established for photogrammetric mapping and digital data production.

(b) Production procedures for topographic and planimetric mapping surveys shall be in accordance with the standards established by Chapter 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is available from the Board office at a cost of five dollars (\$5.00) per copy or from the FGDC.

(c) Topographic or planimetric maps, orthophotos, and/or related electronic data, unless clearly marked as "Preliminary Map," shall meet contractually specified FGDC Standards for horizontal and vertical accuracies (in the absence of specified standards, the National Map Accuracy Standards apply) and shall be sealed, signed and dated by the licensee.

(d) When the resulting product is a digital (electronic) data set, or a map or document consists of more than one sheet or otherwise cannot be signed and sealed, a project report shall be certified, signed and sealed. Such report shall be clearly marked "Preliminary" if applicable.

(e) Ground control for topographic and planimetric mapping projects shall be in North Carolina State Plane Coordinate System grid coordinates and distances when the project is tied to Grid. A minimum of one permanent project vertical control point shall be shown.

(f) The project map or report shall contain the applicable following information:

"I, _____, certify that this project was completed under my direct and responsible charge from an actual (insert as appropriate: ground, airborne, photogrammetric) survey made under my supervision; that this photogrammetric survey was performed to meet Federal Geographic Data Committee Standards as applicable; that the imagery and/or original data was obtained on _____(date)_____; that the photogrammetric survey was completed on _____(date)_____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____.

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be signed, sealed and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media

- (1) Date of original data acquisition;
- (2) Altitude of sensor and sensor focal length, as applicable;
- (3) Date of document or data set compilation;
- (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale, including bargraph, and contour interval, as applicable;
- (5) Coordinate system for horizontal and vertical denoting SI or English units (i.e., NAD83, assumed, or other coordinate system);
- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes (i.e. iron rod, railroad spike, etc), latitude and longitude (or X and Y Grid coordinates), and elevation, as applicable;
- (7) If other data is included, the source and accuracy of those items must be clearly indicated;
- (8) A statement of accuracy complying with contractually specified FGDC standards consistent with Paragraph (c) of this Rule;
- (9) For topographic maps or data sets, contours in areas obscured by man-made or natural features shall be uniquely identified or enclosed by a polygon clearly identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted "No reliance is to be placed on the accuracy of these contours;"
- (10) A vicinity map depicting the project location shall appear on the first sheet of all hard copy maps or in the report accompanying digital files;
- (11) Company name, address and phone number; and
- (12) The name of the client for whom the project was conducted.

(g) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports:

shall not be considered a certified document. See the project report for certificate and seal." *Authority G.S. 89C-10; 89C-20.*

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEM SURVEYS

(a) General. Global Positioning System (GPS) surveys are defined as any survey performed by using the GPS 3-dimensional measurement system based on observations of the

radio signals of the Department of Defense's NAVSTAR (Navigation Satellite Timing and Ranging) GPS System. All GPS boundary and geodetic control surveys, aerial photography control surveys, and GIS/LIS collection surveys of features included in G.S. 89C-3(7) performed in North Carolina shall be performed by a Professional Land Surveyor licensed in North Carolina.

(b) Geodetic control surveys for inclusion of the data in the National Spatial Data Network (Blue Book) shall be performed in accordance with specifications established by the Federal Geographic Data Committee (FGDC) and the National Geodetic Survey. These specifications are incorporated by reference including subsequent amendments and editions. The material is available for inspection at the office of the North Carolina Geodetic Survey, 121 W. Jones Street (Elks Building), Raleigh, North Carolina 27603. Copies may be obtained at the office of the North Carolina Geodetic Survey. GPS surveys performed to

The certification shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision; that this GPS survey was performed to _____ FGCC specifications and that I used _____. GPS field procedures and coordinates were obtained by _____ adjustment. That this survey was performed on _____ using (type) (number) of receivers and all coordinates are based on _____.

Prepared documents shall include coordinates (see Paragraph (f) of this Rule for the list of data to show) of all monuments and a map showing all non-trivial vectors measured. The map shall also contain the following information:

- (1) Scale (bar or numerical).
- (2) Legend.
- (3) Loop closures before any adjustment.
- (4) Certification.
- (5) Company name, address and phone number.

(c) GPS surveys performed to provide local control networks for use as a network base shall be performed using static or rapid static methods. These surveys shall be performed in such a manner that a 95% confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using static or rapid static techniques, or kinematic or real time kinematic techniques. These surveys shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 of this Section, as applicable.

(e) All plats, maps, and reports published based upon this type of GPS survey shall contain a statement worded substantially as follows: "The NC Grid coordinates shown on this [plat or report] were derived by [static or rapid static or kinematic or real time kinematic] differential GPS observations using [number of receivers] [brand name] [model number] receivers. The vectors were adjusted using the fixed station(s) shown using [software brand and program name] software producing a weighted least squares adjustment of the [WGS 84 or NAD 83 or other system] positions. The median vector error is computed to be [x.x] ppm.

other Federal Standards shall conform to the appropriate Federal standard procedures for the specific project.

The Professional Land Surveyor in responsible charge of the GPS survey shall certify, sign and seal all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be signed and sealed. The certificate shall contain the following information:

- (1) Class of GPS survey.
- (2) Type of GPS field procedure (Static, Kinematic, Pseudo-Kinematic).
- (3) Type of adjustment used.
- (4) Dates of survey.
- (5) Type and model of GPS receivers used.
- (6) What datum coordinates or geographic positions are base on.

A loop of [miles or kilometers or feet or meters] using the un-adjusted vectors passing through the fixed and derived control stations yields a loop precision of [1:xxx or xx.x ppm]."

(f) A list or note showing the fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, latitude, longitude, elevation (ellipsoid or orthometric), and geoid height and epoch (93, 96, 99, etc.), and the coordinate reference system. State plane coordinates may be added if desired.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board. For the purpose of specifying minimum allowable surveying standards, three general classifications of LIS/GIS surveys are established:

- (1) Urban and Suburban LIS/GIS surveys (Class A). Urban and suburban LIS/GIS surveys include the location of features within lands which lie in or adjoining a town or city. For

Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet).

- (2) Rural LIS/GIS surveys (Class B). Rural LIS/GIS surveys include the location of features within lands which lie outside of suburban areas. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet).
- (3) Regional LIS/GIS surveys (Class C). Regional LIS/GIS surveys include the location of features within lands which lie in multi-county areas. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(b) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey,
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape),
- (3) Date(s) of the survey,
- (4) Datum used for the survey.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1609 MINIMUM PHOTOGRAMMETRIC PRODUCTION STANDARDS

Authority G.S. 89C-10; 89C-20.

SECTION .1700 - CONTINUING PROFESSIONAL COMPETENCY

21 NCAC 56 .1708 REINSTATEMENT

A licensee may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30, then 30 shall be the maximum number required. Reinstatement of a license that was not renewed within 12 months after expiration (archived license), in addition to a new application, requires obtaining all delinquent PDH units as required to reinstate an inactive license.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1713 SPONSORS

(a) The Board shall approve sponsors of Continuing Professional Competency (CPC) activities and not particular courses. The Board shall maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56 .1700. Such sponsors shall indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the

Board. These sponsors shall be designated as "Approved Sponsors."

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor shall agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board.
- (2) Allow persons designated by this Board to review course material for the purpose of determining that said course meets the standards of the Board.
- (3) State in every brochure, publication or announcement concerning the course, the general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH).
- (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter.
- (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number of PDHs earned.
- (6) Submit quarterly reports to the Board which shall include the sponsor's name, the name of the course, the date and location held, the instructor's name, the number of PDHs earned and a list of attendees.
- (7) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program and who has the responsibility for assuring and demonstrating to the Board compliance with these Rules, as well as for any other organization working with the sponsor for the development, distribution and/or presentation of CPC courses or activities.
- (8) Retain for a period of three years a copy of the above documentation.

(c) Sponsors shall renew annually on a form provided by the Board.

(d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement shall be grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action. A sponsor that is given notice of revocation, suspension or termination can request an administrative hearing to be conducted as provided in 21 NCAC 56 .1400 Contested Cases.

Authority G.S. 89C-10(a); 89C-17.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Facility Services*

Rule Citation: *10 NCAC 03R .1125-.1126, .1615-.1616, .1715, .1912, .1914, .2013, .2113-.2116, .2118-.2119, .2217, .2511, .2713-.2715, .2717, .3701-.3705, .6351-.6385, .6389-.6395*

Effective Date: *January 1, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 131E-176(25); 131E-177(1); 131E-183(b)*

Reason for Proposed Action: *Temporary rules must be adopted to implement the 2002 State Medical Facilities Plan (SMFP) on January 1, 2002, as recommended by the State Health Coordinating Council and approved by the Governor. Temporary rule-making is necessary because the annual planning process for the SMFP does not leave the Department with the time necessary to utilize the permanent rule-making process.*

Comment Procedures: *Questions or comments concerning the rules should be directed to Mark Benton, Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701.*

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R - CERTIFICATE OF NEED REGULATIONS

SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY SERVICES

10 NCAC 03R .1125 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.
- (b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be clearly stated.
- (c) An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within

45 minutes normal automobile driving time (one-way) from the facility, with the exception that this standard shall be waived for applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are located in isolated or remote locations, fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

(d) An applicant proposing to establish a new nursing facility or adult care home shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.

(e) An applicant proposing to establish a new nursing facility or adult care home shall document that the proposed site and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.

(f) An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10 NCAC 03H or 10 NCAC 42D, whichever is applicable.

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002.

10 NCAC 03R .1126 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.

(d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002.

**SECTION .1600 - CRITERIA AND STANDARDS FOR
CARDIAC CATHETERIZATION EQUIPMENT AND
CARDIAC ANGIOPLASTY EQUIPMENT**

**10 NCAC 03R .1615 REQUIRED PERFORMANCE
STANDARDS**

(a) An applicant shall demonstrate that the project is capable of meeting the following standards:

- (1) each proposed item of cardiac catheterization equipment or cardiac angioplasty equipment, including mobile equipment but excluding shared fixed cardiac catheterization or angioplasty equipment, shall be utilized at an annual rate of at least 60 percent of capacity excluding procedures not defined as cardiac catheterization procedures in 10 NCAC 03R .1613(5), measured during the fourth quarter of the third year following completion of the project;
- (2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures, during the third year of operation following completion of the project;
- (3) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;
- (4) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;

(b) An applicant proposing to acquire mobile cardiac catheterization or mobile cardiac angioplasty equipment shall:

- (1) demonstrate that each existing item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
- (2) demonstrate that the utilization of each existing or approved item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed cardiac catheterization, cardiac angioplasty, or mobile equipment;
- (3) demonstrate that each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area of each host facility shall have been performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the 12 month period preceding the submittal of the application;
- (4) demonstrate that each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area of each host facility shall be performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation; and
- (5) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(c) An applicant proposing to acquire cardiac catheterization or cardiac angioplasty equipment excluding shared fixed and mobile cardiac catheterization or cardiac angioplasty equipment shall:

- (1) demonstrate that its existing items of cardiac catheterization and cardiac angioplasty equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated at an average of at least 80% of capacity during the twelve month period reflected in the most recent licensure renewal application form on file with the Division of Facility Services;
- (2) demonstrate that its existing items of cardiac catheterization equipment or cardiac angioplasty equipment, except mobile equipment, shall be utilized at an average annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project; and

- (3) provide documentation of all assumptions and data used in the development of the projections required in this Rule.
- (d) An applicant proposing to acquire shared fixed cardiac catheterization or cardiac angioplasty equipment as defined in the applicable State Medical Facilities Plan shall:
 - (1) demonstrate that each proposed item of shared fixed cardiac catheterization or cardiac angioplasty equipment shall perform a combined total of at least 225 cardiac catheterization and angiography procedures during the fourth quarter of the third year following completion of the project; and
 - (2) provide documentation of all assumptions and data used in the development of the projections required in this Rule.
- (e) If the applicant proposes to perform cardiac catheterization procedures on patients age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:
 - (1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients age 14 and under;
 - (2) the proposed project shall be performing at an annual rate of at least 100 cardiac catheterization procedures on patients age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization procedures for patients age 14 and under.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. November 1, 1996; February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .1616 REQUIRED SUPPORT SERVICES

- (a) If the applicant proposes to perform therapeutic cardiac catheterization procedures, the applicant shall demonstrate that open heart surgery services are provided within the same facility.
- (b) If the applicant proposes to perform diagnostic cardiac catheterization procedures, the applicant shall document that its patients will have access to a facility which provides open heart

surgery services, and that the patients can be transported to that facility within 30 minutes and with no greater risk than if the procedure had been performed in a hospital which provides open heart surgery services; with the exception that the 30 minute transport requirement shall be waived for equipment that was identified as needed in the State Medical Facilities Plan based on an adjusted need determination or the determination of a need for shared-fixed cardiac catheterization equipment.

- (c) The applicant shall provide documentation to demonstrate that the following services shall be available in the facility:
 - (1) electrocardiography laboratory and testing services including stress testing and continuous cardiogram monitoring;
 - (2) echocardiography service;
 - (3) blood gas laboratory;
 - (4) pulmonary function unit;
 - (5) staffed blood bank;
 - (6) hematology laboratory/coagulation laboratory;
 - (7) microbiology laboratory;
 - (8) clinical pathology laboratory with facilities for blood chemistry;
 - (9) immediate endocardiac catheter pacemaking in case of cardiac arrest; and
 - (10) nuclear medicine services including nuclear cardiology.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. February 1, 1994; Temporary Amendment Eff. February 2, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

SECTION .1700 - CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES

10 NCAC 03R .1715 REQUIRED PERFORMANCE STANDARDS

The applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) the applicant shall perform at least 4 diagnostic catheterizations per open heart surgical procedure during each quarter;
- (2) an applicant's existing and new or additional heart-lung bypass machines shall be utilized at an annual rate of 200 open heart surgical procedures per machine, measured during the twelfth quarter following completion of the project;
- (3) at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;
- (4) the applicant's projected utilization and proposed staffing patterns are such that each

- (5) open heart surgical team shall perform at an annual rate of at least 150 open heart surgical procedures by the end of the third year following completion of the project;
- (5) the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and
- (6) heart-lung bypass machines that have been acquired for non-surgical use, or for non-heart surgical procedure use, and that are dedicated for services that are not related to the open heart surgery services, shall not be utilized in the performance of open heart surgical procedures.

- (7) "Linear accelerator service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.
- (9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) "Radiation therapy services" means those services which involve the delivery of precisely controlled and monitored doses of radiation to a well defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.
- (13) "Radiation therapy service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) "Simulator" means a machine that precisely reproduces the geometric relationships of the MRT equipment to the patient.
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 4.0 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) particle radiation therapy which equals 2.0 ESTVs;
 - (e) weekly radiation therapy management, conformal, which equals 1.5 ESTVs;
 - (f) limb salvage irradiation at lengthened SSD which equals 1.0 ESTV;
 - (g) additional field check radiographs which equals .50 ESTV;
 - (h) stereotactic radiosurgery treatment management which equals 3.0 ESTVs; and

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Amended Eff. November 1, 1989; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000 and shall expire on the date on which the permanent amendment to this rule, approved by the Rules Review Commission on November 17, 1999, becomes effective; Amended Eff. July 1, 2000; Temporary Amendment Eff. January 1, 2002.

SECTION .1900 - CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

10 NCAC 03R .1912 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period.
- (2) "Complex Radiation treatment" is equal to 1.0 ESTVs and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to 15 minutes for the uncomplicated set-up and treatment of a patient on a modern megavoltage teletherapy unit including the time necessary for portal filming.
- (4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 1.0 ESTVs.
- (6) "Linear accelerator" means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.

- (i) pediatric patient which equals 1.2 ESTVs.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002.

10 NCAC 03R .1914 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:
 - (1) an applicant's existing linear accelerators located in the proposed service area performed at least 6,750 ESTV treatments per machine in the twelve months prior to the date the application was submitted;
 - (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,500 6,750 ESTV treatments during the third year of operation of the new equipment; and
 - (3) an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 6,750 ESTV treatments per machine during the third year of operation of the new equipment.
- (b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.
- (c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:
 - (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
 - (2) the maximum number and type of procedures that the proposed equipment is capable of performing.
- (d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183 (b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. January 1, 1999;

Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002.

SECTION .2000 - CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

10 NCAC 03R .2013 PERFORMANCE STANDARDS

An applicant shall project, in the third year of operation, an annual unduplicated patient caseload for the county in which the facility will be located that meets or exceeds the minimum need used in the applicable State Medical Facilities Plan to justify the establishment of a new home health agency office in that county. An applicant shall not be required to meet this performance standard if the home health agency office need determination in the applicable State Medical Facilities Plan was not based on application of the standard methodology for a Medicare-certified home health agency office.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. March 1, 1996; Temporary Amendment Eff. January 1, 2002.

SECTION .2100 - CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES AND OPERATING ROOMS

10 NCAC 03R .2113 DEFINITIONS

- The following definitions shall apply to all rules in this Section:
- (1) "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an operating room during a single operative encounter.
 - (2) "Ambulatory surgical service area" means a single or multi-county area as used in the development of the ambulatory surgical facility need determination in the applicable State Medical Facilities Plan.
 - (3) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.
 - (4) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1a).
 - (5) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.
 - (6) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1b).
 - (7) "Ambulatory surgical procedure" means a procedure performed in an operating room which requires local, regional or general

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- anesthesia and a period of post-operative observation of less than 24 hours.
- (8) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.
- (9) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified.
- (10) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- (11) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of ambulatory surgical procedures.
- (12) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- (13) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- (14) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- (15) "Practical utilization" is 4.3 surgical cases per day for an outpatient or ambulatory surgical operating room, 3.5 surgical cases per day for a shared operating room, 2.7 surgical cases per day for an inpatient operating room, and 4.3 cases per day for an endoscopy procedure room.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000;

Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2114 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the following information regarding the services to be offered in the facility following completion of the project:

- (1) the number and type of existing and proposed operating rooms;
- (2) the number and type of existing and proposed shared operating rooms;
- (3) the current and projected number of surgical procedures, identified by CPT code or ICD-9-CM procedure code, to be performed in the operating rooms;
- (4) the fixed and movable equipment to be located in each operating room;
- (5) the hours of operation of the proposed operating rooms;
- (6) if the applicant is an existing facility, the average charge for the 20 surgical procedures most commonly performed in the facility during the preceding twelve months and a list of all services and items included in each charge;
- (7) the projected average charge for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items in each charge; and
- (8) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

History Note: Authority G.S. 131E-177; 131E-183(b);

Eff. November 1, 1990;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2115 NEED FOR SERVICES

- (a) In projecting utilization for existing, approved, proposed and expanded surgical programs, a program shall be considered to be open five days per week and 52 weeks a year.
- (b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in the applicant's facility is projected to be at least 2.7 surgical cases per day for each inpatient operating room, 4.3 surgical cases per day for each outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure room, and 3.5 surgical cases per day for each shared operating room during the fourth quarter of the third year of operation following completion of the project.
- (c) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.3 surgical cases per day for each outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure room, and 3.5 surgical cases per day for each shared operating room.
- (d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the ambulatory surgical service area that performs ambulatory surgery in the same specialty areas as proposed in the application is projected to be operating at 4.3 surgical cases per day for each outpatient or ambulatory surgical operating room, 4.3 cases per day for each endoscopy procedure room, and 3.5 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. The applicant shall document the assumptions and provide data supporting the methodology used for the projections.

History Note: Authority G.S. 131E-177; 131E-183(b);
Eff. November 1, 1990;
Amended Eff. March 1, 1993;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2116 FACILITY

- (a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.
- (b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.
- (c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.
- (d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas will be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.
- (e) The applicant shall provide a floor plan of the proposed facility clearly identifying the following areas:
 - (1) receiving/registering area;
 - (2) waiting area;
 - (3) pre-operative area;
 - (4) operating room by type;
 - (5) recovery area; and
 - (6) observation area.
- (f) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:
 - (1) physicians;
 - (2) ancillary services;
 - (3) support services;
 - (4) medical equipment;
 - (5) surgical equipment;
 - (6) receiving/registering area;
 - (7) clinical support areas;
 - (8) medical records;
 - (9) waiting area;
 - (10) pre-operative area;
 - (11) operating rooms by type;

- (12) recovery area; and
- (13) observation area.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2118 STAFFING

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify, justify and document the availability of the number of current and proposed staff to be utilized in the following areas:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) operating room; and
- (5) other.

(b) The applicant shall identify the number of physicians who currently utilize the facility and estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the ambulatory surgical service area in which the facility is, or will be, located or will have written referral procedures with a physician who is an active member in good standing at a general acute care hospital in the ambulatory surgical service area.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2119 RELATIONSHIP TO SUPPORT AND ANCILLARY SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility, increase the number of operating rooms, convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or add a specialty to a specialty ambulatory surgical program shall provide written

policies and procedures demonstrating that the facility will have patient referral, transfer, and followup procedures.

(b) The applicant shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services;
- (2) support services;
- (3) ancillary services; and
- (4) public transportation.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

SECTION .2200 - CRITERIA AND STANDARDS FOR END-STAGE RENAL DISEASE SERVICES

10 NCAC 03R .2217 PERFORMANCE STANDARDS

(a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

(b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the first day of operation of the additional stations.

(c) An applicant shall provide all assumptions, including the specific methodology by which patient utilization is projected.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

SECTION .2500 - CRITERIA AND STANDARDS FOR SUBSTANCE ABUSE/CHEMICAL DEPENDENCY TREATMENT BEDS

10 NCAC 03R .2511 PERFORMANCE STANDARDS

(a) An applicant shall not be approved unless the overall occupancy, over the nine months immediately preceding the submittal of the application, of the total number of intensive treatment beds and detoxification beds within the facility in which the beds are to be located, except in facilities with only detoxification beds, has been:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(b) An applicant shall not be approved unless the overall occupancy of the total number of intensive treatment beds and detoxification beds to be operated in the facility is projected, except in facilities with only detoxification beds, by the fourth

quarter of the third year of operation following completion of the project, to be:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(c) An applicant proposing to add detoxification beds to an existing facility that includes only detoxification beds shall not be approved unless the overall occupancy of the total number of detoxification beds in the facility has been at least 75 percent for the nine months immediately preceding the submittal of the application.

(d) An applicant proposing to establish a new detoxification facility or add detoxification beds to an existing facility that includes only detoxification beds shall demonstrate that the overall occupancy of the total number of detoxification beds in the facility is reasonably projected to be 75 percent by the fourth quarter of the third year of operation following completion of the project.

(e) The applicant shall document the specific methodology and assumptions by which occupancies are projected, including the average length of stay and anticipated recidivism rate.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002.

SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER

10 NCAC 03R .2713 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (3) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (4) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e), and includes dedicated fixed breast MRI scanners.
- (5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.

- (6) "MRI procedure" means a single discrete MRI study of one patient.
- (7) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan which are the same for both mobile and fixed MRI scanners.
- (8) "MRI study" means one or more scans relative to a single diagnosis or symptom.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2714 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire an MRI scanner, including a Mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.
- (b) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall also provide the following additional information:
 - (1) documentation that the MRI scanner shall be available and staffed for use at least 66 hours per week, with the exception of a mobile MRI scanner;
 - (2) projections of the annual number of procedures to be performed by type of service and the average charge for each proposed procedure for each of the first three years of operation after completion of the project. This information shall be provided separately for each proposed host facility if the application proposes the acquisition of a mobile MRI scanner;
 - (3) documentation of the need for an additional MRI scanner in the proposed MRI service area and description of the methodology used to project need, including all assumptions regarding the population to be served;
 - (4) documentation that the proposed MRI scanner, including a mobile MRI scanner, shall have affiliation agreements or referral agreements with respect to the following diagnostic modalities:

- (A) radio isotopic imaging studies;
 - (B) diagnostic X-Ray studies;
 - (C) angiograms, including digital;
 - (D) diagnostic ultrasound studies; and
 - (E) computed tomography (full body);
- (5) except for proposed MRI scanners to be used exclusively for research purposes, documentation that all equipment, supplies and pharmaceuticals proposed for the service have been certified for clinical use by the U.S. Food and Drug Administration or shall be operated under an institutional review board whose membership is consistent with U.S. Department of Health and Human Service regulations, with the exception that this requirement does not apply to the use of gadolinium in children if written consent is obtained from the parents stating that they understand that gadolinium has been FDA approved for adults, but not for children at this time;
- (6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner; and
- (7) copies of agreements that have been established to accommodate referrals from other facilities in the MRI service area.

(c) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.

(d) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall:

- (1) provide a copy of a contract or working agreement with a radiologist or practice group that is competent, qualified, and trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;
- (2) document that the applicant performed mammograms continuously for the last year; and
- (3) document that the applicant's existing mammography equipment is in compliance with the U.S. Food and Drug Administration Mammography Quality Standards Act.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2002.

10 NCAC 03R .2715 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:

- (1) demonstrate that all existing MRI scanners, except those moved to provide services at more than one site, operating in the MRI

- (2) service area(s) in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year;
- (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed MRI scanner will be located;
- (3) demonstrate that all MRI scanners, except mobile, located in the MRI service area(s) in which the proposed MRI scanner will be located, shall be performing at least 2900 MRI procedures per year in the applicant's third year of operation;
- (4) demonstrate that all mobile MRI scanners located in the MRI service area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the proposed MRI service area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the MRI service area(s) in the applicant's third year of operation;
- (5) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the utilization of fixed MRI scanners, shall:

- (1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed an average of at least 2900 MRI procedures per scanner in the last year;
- (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year for the proposed MRI scanner and an average of 2900 procedures per scanner for all other MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(c) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on utilization of mobile MRI scanners, shall:

- (1) project annual utilization in the third year of operation of at least 2080 MRI procedures per year, for the proposed MRI scanner and an average of 2900 MRI procedures per scanner for all other MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and

- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .2717 REQUIRED STAFFING AND STAFF TRAINING

- (a) An applicant proposing to acquire an MRI scanner shall demonstrate that one board certified diagnostic radiologist shall be available to provide the proposed services who has had:
- (1) training in magnetic resonance imaging as an integral part of his or her residency training program; or
 - (2) six months of supervised MRI experience under the direction of a qualified diagnostic radiologist; or
 - (3) at least six months of fellowship training, or its equivalent, in MRI; or
 - (4) an appropriate combination of MRI experience and fellowship training equivalent to Subparagraph (a)(1), (2) or (3) of this Rule.
- (b) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall provide documentation that the radiologist is trained and has experience in interpreting images produced by an MRI scanner configured exclusively to perform mammographic studies.
- (c) The applicant shall provide evidence of the availability of two full-time MRI technologist-radiographers and that one of these technologists shall be present during the hours of operation of the MRI scanner.
- (d) An applicant proposing to acquire an MRI scanner shall demonstrate that the following staff training is provided:
- (1) certification in cardiopulmonary resuscitation (CPR) and basic cardiac life support; and
 - (2) an organized program of staff education and training which is integral to the services program and ensures improvement in technique and the proper training of new personnel.
- (e) An applicant proposing to acquire a mobile MRI scanner shall document that the requirements in Paragraphs (a) and (c) of this Rule shall be met at each host facility.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2002.

SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER

10 NCAC 03R .3701 DEFINITIONS

- The following definitions shall apply to all rules in this Section:
- (1) "Approved positron emission tomography (PET) scanner" means a PET scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
 - (2) "Cyclotron" means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.
 - (3) "Existing PET scanner" means a PET scanner in operation prior to the beginning of the review period.
 - (4) "Mobile PET Scanner" means a PET scanner and transporting equipment that is moved, at least weekly, to provide services at two or more host facilities.
 - (5) "PET procedure" means a single discrete study of one patient involving one or more PET scans.
 - (6) "PET scan" means an image-scanning sequence derived from a single administration of a PET radiopharmaceutical, equated with a single injection of the tracer. One or more PET scans comprise a PET procedure.
 - (7) "PET scanner service area" means the PET Scanner Service Area as defined in the applicable State Medical Facilities Plan.
 - (8) "Positron emission tomographic scanner" (PET) is defined in G.S. 131E-176(19a).
 - (9) "Radioisotope" means a radiochemical which directly traces biological processes when introduced into the body.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .3702 INFORMATION REQUIRED OF APPLICANT

TEMPORARY RULES

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

- (1) The projected number of procedures to be performed and the projected number of patients to be served for each of the first three years following completion of the proposed project. Projections shall be listed by clinical area (e.g., oncology, cardiology), and all methodologies and assumptions used in making the projections shall be provided.
- (2) Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the twelve months immediately prior to the date on which the application is filed:
 - (A) nuclear medicine imaging services;
 - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
 - (C) magnetic resonance imaging scans;
 - (D) computerized tomography scans;
 - (E) cardiac angiography;
 - (F) cardiac ultrasound; and
 - (G) neuroangiography.
- (3) Documentation that the facility will:
 - (A) establish the clinical PET unit, and any accompanying equipment used in the manufacture of positron-emitting radioisotopes, as a regional resource that will have no administrative, clinical or charge requirements that would impede physician referrals of patients for whom PET testing would be appropriate;
 - (B) provide scheduled hours of operation for the PET scanner of a minimum of 12 hours per day, six days a week, except for mobile scanners; and (C) implement a referral system which shall include a feedback mechanism of providing patient information to the referring physician and facility.
- (4) A description of the protocols that will be established to assure that all clinical PET procedures performed are medically necessary and cannot be performed using other, less expensive, established modalities.

(c) An applicant proposing to acquire a mobile PET scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities at which the mobile PET scanner will be operated.

(d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

(e) An applicant shall document that all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations.

(f) An applicant shall document that each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturers specifications, and licensing requirements. The following shall be addressed:

- (1) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
- (2) quality control measures and assurance of PET tomograph and associated instrumentation;
- (3) radiation protection and shielding;
- (4) radioactive emission to the environment; and
- (5) radioactive waste disposal.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002.

10 NCAC 03R .3703 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall demonstrate that:

- (1) the proposed PET scanner, including mobile PET scanners and PET scanners not used solely for PET imaging, shall be utilized at an annual rate of at least 1,220 PET procedures by the end of the third year following completion of the project;
- (2) its existing PET scanners, excluding those used exclusively for research, performed an average of 1,220 procedures of any type per PET scanner in the last year; (3) its existing and approved PET scanners shall perform an average of at least 1,220 procedures of any type per PET scanner during the third year following completion of the project.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2001.

10 NCAC 03R .3704 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document how medical emergencies within the PET scanner unit will be managed in conformity with

accepted medical practice at each facility where the PET scanner will be operated.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that radioisotopes shall be acquired from one or more of the following sources and shall identify the sources which will be utilized by the applicant:

- (1) an off-site medical cyclotron and radioisotope production facility that is located within two hours transport time to each facility where the PET scanner will be operated;
- (2) an on-site rubidium-82 generator; or
- (3) an on-site medical cyclotron for radio nuclide production and a chemistry unit for labeling radioisotopes.

(c) An applicant proposing to acquire an on-site cyclotron for radioisotope production shall document that these agents are not available or cannot be obtained in an economically cost effective manner from an off-site cyclotron located within 2 hours total transport time from the applicant's facility.

(d) An applicant proposing to develop new PET scanner services, including mobile PET scanner services, shall establish a clinical oversight committee at each facility where the PET scanner will be operated before the proposed PET scanner is placed in service that shall:

- (1) develop screening criteria for appropriate PET scanner utilization;
- (2) review clinical protocols;
- (3) review appropriateness and quality of clinical procedures;
- (4) develop educational programs; and
- (5) oversee the data collection and evaluation activities of the PET scanning service.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002.

10 NCAC 03R .3705 REQUIRED STAFFING AND STAFF TRAINING

(a) An applicant proposing to acquire to acquire a PET scanner, including a mobile PET scanner, shall document that the scanner will be staffed by the following personnel:

- (1) One or more full-time nuclear medicine imaging physicians who:
 - (A) are licensed by the State to handle medical radioisotopes;
 - (B) have specialized in the acquisition and interpretation of nuclear images, including tomographic studies, for at least one year;
 - (C) have acquired knowledge about PET through experience or postdoctoral education; and
 - (D) have had practical training with an operational PET scanner;

- (2) Engineering and physics personnel with training and experience in the operation and maintenance of PET scanning equipment;
- (3) Radiation safety personnel with training and experience in the handling of short-lived positron emitting nuclides; and
- (4) Certified nuclear medicine technologists with training and experience in positron emission computed tomographic nuclear medicine imaging procedures.

(b) An applicant proposing to acquire a cyclotron shall document that the cyclotron shall be staffed by radiochemists or radiopharmacists who:

- (1) have at least one year of training and experience in the synthesis of short-lived positron emitting radioisotopes; and
- (2) have at least one year of training and experience in the testing of chemical, radiochemical, and radionuclidic purity of PET radiopharmaceutical synthesis.

(c) An applicant proposing to acquire a PET scanner, a mobile PET scanner, or a cyclotron, shall document that the personnel described in Paragraphs (a) and (b) of this Rule shall be available at all times that the scanner or cyclotron are operating.

(d) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that a program of continuing staff education will be provided that will insure the proper training of new personnel and the maintenance of staff competence as clinical PET applications, techniques and technology continue to develop and evolve.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002.

SECTION .6300 – PLANNING POLICIES AND NEED DETERMINATIONS FOR 2001 AND 2002

10 NCAC 03R .6351 APPLICABILITY OF RULES RELATED TO THE 2002 STATE MEDICAL FACILITIES PLAN

Rules .6351 through .6354 and .6356 through .6385 and .6389 through .6395 of this Section apply to certificate of need applications for which the scheduled review period begins during calendar year 2002. In addition, Rule .6355 of this Section shall be used to implement procedures described within it during calendar year 2002.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6352 CERTIFICATE OF NEED REVIEW SCHEDULE

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

TEMPORARY RULES

- (1) Acute Care Beds (in accordance with the need determination in 10 NCAC 03R .6356)

Hospital Service System	CON Beginning Review Date
Brunswick County Hospital	July 1, 2002

- (2) Operating Rooms (in accordance with the need determination in 10 NCAC 03R .6358)

Ambulatory Surgery Service Area (Constituent Counties)	Certificate of Need Beginning Review Date
8 (Bladen, Cumberland, Robeson, Sampson)	March 1, 2002
10 (Buncombe, Haywood, Madison, Mitchell, Yancey)	March 1, 2002
24 (Greene, Lenoir, Martin, Pitt)	July 1, 2002
27 (Hoke, Lee, Montgomery, Moore, Richmond, Scotland)	March 1, 2002

- (3) Open Heart Surgery Services (in accordance with the need determination in 10 NCAC 03R .6359)

County	CON Beginning Review Date
Robeson	May 1, 2002

- (4) Heart-Lung Bypass Machines (in accordance with the need determination in 10 NCAC 03R .6360)

Hospital Service System	CON Beginning Review Date
Pitt County Memorial	May 1, 2002
NorthEast Medical Center	August 1, 2002

- (5) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6361)

County	CON Beginning Review Date
Gaston	April 1, 2002
Wake	September 1, 2002

- (6) Shared Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6362)

Hospital Service System	CON Beginning Review Date
Columbus County	September 1, 2002

- (7) Radiation Oncology Treatment Center (in accordance with the need determination in 10 NCAC 03R .6368)

Radiation Oncology Treatment Center Service Area	CON Beginning Review Date
6 (Cleveland, Gaston, Lincoln, Rutherford)	June 1, 2002

- (8) Mobile Dedicated Positron Emission Tomography (PET) Scanners (in accordance with the need determination in 10 NCAC 03R .6369)

Positron Emission Tomography (PET) Scanners Planning Region	CON Beginning Review Date
1 (HSAs I, II, III)	August 1, 2002
2 (HSAs IV, V, VI)	November 1, 2002

- (9) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6370)

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	CON Beginning Review Date
4 (Ashe, Avery, Watauga)	August 1, 2002
6 (Rutherford, Cleveland)	April 1, 2002

TEMPORARY RULES

8 (Gaston)	June 1, 2002
9 (Cabarrus, Montgomery, Rowan, Stanly)	June 1, 2002
10 (Iredell)	December 1, 2002
11 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	April 1, 2002
13 (Caswell, Durham, Granville, Person, Vance, Warren)	May 1, 2002
17 (Anson, Mecklenburg, Union)	October 1, 2002
18 (Cumberland, Hoke, Moore, Robeson, Sampson)	May 1, 2002
19 (Franklin, Harnett, Johnston, Wake)	November 1, 2002
23 (Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington)	November 1, 2002

- (10) Dedicated Fixed Breast Magnetic Resonance Imaging (MRI) Scanner Need Determination (in accordance with 10 NCAC 03R .6371)

Magnetic Resonance Imaging Scanners Service Area	CON Beginning Review Date
17 (Anson, Mecklenburg, Union)	December 1, 2002

- (11) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6372)

Magnetic Resonance Imaging Scanners Service Area	CON Beginning Review Date
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	August 1, 2002
10 (Iredell)	April 1, 2002
15 (Davidson, Guilford, Randolph & Rockingham)	October 1, 2002
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	September 1, 2002

- (12) Adult Care Home Beds (in accordance with the need determination in 10 NCAC 03R .6374)

County	CON Beginning Review Date
Ashe	August 1, 2002
Cherokee	June 1, 2002
Dare	May 1, 2002
Gates	November 1, 2002
Graham	April 1, 2002
Greene	September 1, 2002
Halifax	November 1, 2002
Jones	September 1, 2002
Macon	April 1, 2002
Madison	June 1, 2002
Mitchell	August 1, 2002
Pender	September 1, 2002
Tyrrell	May 1, 2002
Washington	May 1, 2002

- (13) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6375)

County	CON Beginning Review Date
Montgomery	March 1, 2002
Pamlico	December 1, 2002

- (14) Hospice Home Care Programs (in accordance with the need determination in 10 NCAC 03R .6378)

County	CON Beginning Review Date
Beaufort	March 1, 2002
Craven	March 1, 2002
Johnston	December 1, 2002

TEMPORARY RULES

Robeson	December 1, 2002
Rowan	June 1, 2002
Wilson	March 1, 2002

- (15) Single County New Hospice Inpatient Beds (in accordance with the need determination in 10 NCAC 03R .6379)

County	CON Beginning Review Date
Cleveland	October 1, 2002
Cumberland	July 1, 2002
Gaston	June 1, 2002
Richmond	July 1, 2002
Rutherford	October 1, 2002

- (16) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6382)

Mental Health Planning Region	CON Beginning Review Date
North Central Region	July 1, 2002

- (17) Adult Chemical Dependency (Substance Abuse) Treatment Beds, (in accordance with the need determination in 10 NCAC 03R .6382)

Mental Health Planning Region	CON Beginning Review Date
North Central Region	July 1, 2002

- (18) Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6383)

Mental Health Planning Area	CON Beginning Review Date
1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)	July 1, 2002
2 (Buncombe, Madison, Mitchell, Yancey)	July 1, 2002
4 (Henderson, Transylvania)	July 1, 2002
5 (Alexander, Burke, Caldwell, McDowell)	July 1, 2002
6 (Rutherford, Polk)	July 1, 2002
7 (Cleveland, Gaston, Lincoln)	July 1, 2002
10 (Rowan, Stanly, Cabarrus, Union)	July 1, 2002
11 (Surry, Yadkin, Iredell)	July 1, 2002
13 (Rockingham)	July 1, 2002
15 (Alamance, Caswell)	July 1, 2002
16 (Orange, Person, Chatham)	July 1, 2002
18 (Vance, Granville, Franklin, Warren)	July 1, 2002
19 (Davidson)	July 1, 2002
21 (Bladen, Columbus, Robeson, Scotland)	July 1, 2002
24 (Johnston)	July 1, 2002
25 (Wake)	July 1, 2002
26 (Randolph)	July 1, 2002
29 (Wayne)	July 1, 2002
30 (Wilson, Greene)	July 1, 2002
31 (Edgecombe, Nash)	July 1, 2002
32 (Halifax)	July 1, 2002
33 (Carteret, Craven, Jones, Pamlico)	July 1, 2002
34 (Lenoir)	July 1, 2002
36 (Bertie, Gates, Hertford, Northampton)	July 1, 2002
37 (Beaufort, Hyde, Martin, Tyrrell, Washington)	July 1, 2002
38 (Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)	July 1, 2002
39 (Duplin, Sampson)	July 1, 2002

- (19) There are 10 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 03R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The 10 categories are:
- (a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
 - (b) Category B. Proposals for nursing care beds; adult care home beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6389(b) or .6390; and relocations of nursing care beds under 10 NCAC 03R .6389(d) or 10 NCAC 03R .6389(f).
 - (c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities; transfers of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6389(e); transfers of ICF/MR beds from State Mental Retardation Centers to community facilities pursuant to Chapter 858 of the 1983 Sessions Laws.
 - (d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.
 - (e) Category E. Proposals for inpatient rehabilitation facilities; inpatient rehabilitation beds; licensed ambulatory surgical facilities; new operating rooms and relocations of existing operating rooms as defined in 10 NCAC 03R .6358(b).
 - (f) Category F. Proposals for new Medicare-certified home health agencies or offices; new hospices; new hospice inpatient facility beds; and new hospice residential care facility beds.
 - (g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 03R .6389(a); and conversion of acute care hospitals to long-term acute care hospitals.(h)
Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).
 - (i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 03R .6389(b) for exemption from need determinations in 10 NCAC 03R .6373 or 10 NCAC 03R .6390 for exemption from need determinations in 10 NCAC 03R .6374; relocations within the same county of existing health service facilities, beds or dialysis stations (excluding relocation of operating rooms as defined in 10 NCAC 03R .6358(b)) which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 03R .6385(c) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of replacement equipment that does not result in an increase in the

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- inventory; and any other proposal not included in Categories A through H and Category J.
- (j) Category J. Proposals for demonstration projects.
- (20) A service, facility, or equipment for which a need determination is identified in Items (1) through (18) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as specified in these Items, even though the following review schedule shows multiple

review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (18) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 03R .6376 or 10 NCAC 03R .6377.

CON Beginning Review Date	Review Categories for HSA I, II, III	Review Categories for HSA IV, V, VI
January 1, 2002	--	--
February 1, 2002	--	--
March 1, 2002	A, E, G, I, J	A, C, E, F, G, H, I, J
April 1, 2002	B, C, D, H, I	D
May 1, 2002	--	B, C, H, I
June 1, 2002	A, B, C, F, H, I	--
July 1, 2002	C	A, C, E, F, I
August 1, 2002	B, H, I	--
September 1, 2002	--	B, C, H, I
October 1, 2002	A, C, D, E, F, H, I	D
November 1, 2002	--	A, B, C, H, I
December 1, 2002	C, H, I	F

- For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is considered to be in HSA III and Caswell County in MRI Area 13 is considered to be in HSA IV.
- (21) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the month preceding the "CON Beginning

Review Date." In instances when the 15th day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6353 MULTI-COUNTY GROUPINGS

(a) Health Service Areas. The Department of Health and Human Services (DHHS) has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

HEALTH SERVICE AREAS (HSA)

I County	II County	III County	IV County	V County	VI County
Alexander	Alamance	Cabarrus	Chatham	Anson	Beaufort
Alleghany	Caswell	Gaston	Durham	Bladen	Bertie
Ashe	Davidson	Iredell	Franklin	Brunswick	Camden
Avery	Davie	Lincoln	Granville	Columbus	Carteret
Buncombe	Forsyth	Mecklenburg	Johnston	Cumberland	Chowan
Burke	Guilford	Rowan	Lee	Harnett	Craven
Caldwell	Randolph	Stanly	Orange	Hoke	Currituck
Catawba	Rockingham	Union	Person	Montgomery	Dare
Cherokee	Stokes		Vance	Moore	Duplin
Clay	Surry		Wake	New Hanover	Edgecombe

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Cleveland	Yadkin	Warren	Pender	Gates
Graham			Richmond	Greene
Haywood			Robeson	Halifax
Henderson			Sampson	Hertford
Jackson			Scotland	Hyde
McDowell				Jones
Macon				Lenoir
Madison				Martin
Mitchell				Nash
Polk				Northampton
Rutherford				Onslow
Swain				Pamlico
Transylvania				Pasquotank
Watauga				Perquimans
Wilkes				Pitt
Yancey				Tyrrell
				Washington
				Wayne
				Wilson

(b) Mental Health Planning Areas. The DHHS has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2	Buncombe, Madison, Mitchell, Yancey
3	Alleghany, Ashe, Avery, Watauga, Wilkes
4	Henderson, Transylvania
5	Alexander, Burke, Caldwell, McDowell
6	Rutherford, Polk
7	Cleveland, Gaston, Lincoln
8	Catawba
9	Mecklenburg
10	Cabarrus, Rowan, Stanly, Union
11	Surry, Yadkin, Iredell
12	Forsyth, Stokes, Davie
13	Rockingham
14	Guilford
15	Alamance, Caswell
16	Orange, Person, Chatham
17	Durham
18	Vance, Granville, Franklin, Warren
19	Davidson
20	Anson, Hoke, Montgomery, Moore, Richmond
21	Bladen, Columbus, Robeson, Scotland
22	Cumberland
23	Lee, Harnett
24	Johnston
25	Wake
26	Randolph
27	Brunswick, New Hanover, Pender
28	Onslow
29	Wayne
30	Wilson, Greene
31	Edgecombe, Nash
32	Halifax
33	Carteret, Craven, Jones, Pamlico
34	Lenoir
35	Pitt

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36	Bertie, Gates, Hertford, Northampton
37	Beaufort, Hyde, Martin, Tyrrell, Washington
38	Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
39	Duplin, Sampson

(c) Mental Health Planning Regions. The DHHS has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)

Western (W)	
1	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2	Buncombe, Madison, Mitchell, Yancey
3	Alleghany, Ashe, Avery, Watauga, Wilkes
4	Henderson, Transylvania
5	Alexander, Burke, Caldwell, McDowell
6	Rutherford, Polk
7	Cleveland, Gaston, Lincoln
8	Catawba
9	Mecklenburg
10	Cabarrus, Rowan, Stanly, Union
North Central (NC)	
11	Surry, Yadkin, Iredell
12	Forsyth, Stokes, Davie
13	Rockingham
14	Guilford
15	Alamance, Caswell
16	Orange, Person, Chatham
17	Durham
18	Vance, Granville, Franklin, Warren
South Central (SC)	
19	Davidson
20	Anson, Hoke, Montgomery, Moore, Richmond
21	Bladen, Columbus, Robeson, Scotland
22	Cumberland
23	Lee, Harnett
24	Johnston
25	Wake
26	Randolph
Eastern (E)	
27	Brunswick, New Hanover, Pender
28	Onslow
29	Wayne
30	Wilson, Greene
31	Edgecombe, Nash
32	Halifax
33	Carteret, Craven, Jones, Pamlico
34	Lenoir
35	Pitt
36	Bertie, Gates, Hertford, Northampton
37	Beaufort, Hyde, Martin, Tyrrell, Washington
38	Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
39	Duplin, Sampson

(d) Radiation Oncology Treatment Center Planning Areas. The DHHS has assigned the counties of the state to the following Radiation Oncology Treatment Center Planning Areas for purposes of the State Medical Facilities Plan:

RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS

Area Number	Constituent Counties

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1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Buncombe, Haywood, Madison, McDowell, Mitchell, Yancey
3	Ashe, Avery, Watauga
4	Henderson, Polk, Transylvania
5	Alexander, Burke, Caldwell, Catawba
6	Rutherford, Cleveland, Gaston, Lincoln
7	Mecklenburg, Anson, Union
8	Iredell, Rowan
9	Cabarrus, Stanly
10	Alleghany, Forsyth, Davidson, Davie, Stokes, Surry, Wilkes, Yadkin
11	Guilford, Randolph, Rockingham
12	Chatham, Orange
12B	Alamance, Caswell
13	Durham, Granville, Person, Vance, Warren
14	Moore, Hoke, Lee, Montgomery, Richmond, Scotland
15	Cumberland, Bladen, Sampson, Robeson
16	New Hanover, Brunswick, Columbus, Pender
17	Wake, Franklin, Harnett, Johnston
18	Lenoir, Duplin, Wayne
19	Craven, Carteret, Onslow, Jones, Pamlico
20	Nash, Halifax, Wilson, Northampton, Edgecombe
21	Pitt, Beaufort, Bertie, Greene, Hertford, Hyde, Martin, Washington
22	Pasquotank, Camden, Chowan, Currituck, Dare, Gates, Perquimans, Tyrrell

(e) Ambulatory Surgical Facility Planning Areas. The DHHS has assigned the counties of the state to the following Ambulatory Surgical Facility Planning Areas for purposes of the State Medical Facilities Plan:

AMBULATORY SURGICAL FACILITY PLANNING AREAS

Area	Constituent Counties
1	Alamance
2	Alexander, Iredell
3	Alleghany, Surry, Wilkes
4	Anson, Gaston, Mecklenburg, Union
5	Ashe, Avery, Watauga
6	Beaufort, Hyde
7	Bertie, Gates, Hertford
8	Bladen, Cumberland, Robeson, Sampson
9	Brunswick, Columbus, Duplin, New Hanover, Pender
10	Buncombe, Haywood, Madison, Mitchell, Yancey
11	Burke, McDowell, Rutherford
12	Cabarrus, Rowan, Stanly
13	Caldwell, Catawba, Lincoln
14	Camden, Currituck, Dare, Pasquotank, Perquimans
15	Carteret, Craven, Jones, Onslow, Pamlico
16	Caswell, Chatham, Orange
17	Cherokee, Clay, Graham, Jackson, Macon, Swain
18	Chowan, Tyrrell, Washington
19	Cleveland
20	Davidson, Davie, Forsyth, Stokes, Yadkin
21	Durham, Granville, Person
22	Edgecombe, Halifax, Nash, Northampton
23	Franklin, Harnett, Johnston, Wake
24	Greene, Lenoir, Martin, Pitt
25	Guilford, Randolph, Rockingham
26	Henderson, Polk, Transylvania
27	Hoke, Lee, Montgomery, Moore, Richmond, Scotland
28	Vance, Warren
29	Wayne
30	Wilson

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(f) Magnetic Resonance Imaging (MRI) Scanners Service Areas for both fixed and mobile MRI scanners. The DHHS has assigned the counties of the state to the following Magnetic Resonance Imaging Scanners Service Areas for purposes of the State Medical Facilities Plan for both fixed and mobile MRI scanners.

MAGNETIC RESONANCE IMAGING PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Haywood
3	Buncombe, Madison, McDowell, Mitchell, Yancey
4	Ashe, Avery, Watauga
5	Alexander, Burke, Caldwell, Catawba, Lincoln
6	Cleveland, Rutherford
7	Henderson, Polk, Transylvania
8	Gaston
9	Cabarrus, Montgomery, Rowan, Stanly
10	Iredell
11	Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin
12	Alamance
13	Durham, Caswell, Granville, Person, Vance, Warren
14	Chatham, Orange, Lee
15	Davidson, Guilford, Randolph, Rockingham
16	Richmond, Scotland
17	Anson, Mecklenburg, Union
18	Cumberland, Hoke, Moore, Robeson, Sampson
19	Franklin, Harnett, Johnston, Wake
20	Lenoir, Wayne, Wilson
21	Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender
22	Carteret, Craven, Jones, Onslow, Pamlico
23	Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington
24	Edgecombe, Halifax, Nash, Northampton
25	Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans, Tyrrell

(g) Positron Emission Tomography (PET) Scanners Planning Regions. The DHHS has assigned the HSAs as outlined in 10 NCAC 03R .6353(a) to the following Positron Emission Tomography (PET) Scanners Planning Regions for purposes of the State Medical Facilities Plan.

POSITRON EMISSION TOMOGRAPHY (PET) SCANNERS PLANNING REGIONS

Region Number	Constituent HSAs
1	HSAs I, II, III
2	HSAs IV, V, VI

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6354 SERVICE AREAS AND PLANNING AREAS

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed planning areas are the hospital service systems which are defined as follows:

- (1) hospitals that are in the same city or within 10 miles of one another are in the same hospital service system;
- (2) hospitals that are under common ownership and within the same county are in the same hospital service system; or
- (3) a ten-mile radius around a hospital that is not included in one of the groups of hospitals described in Subparagraphs (1) or (2) of this Rule is a hospital service system.

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10 NCAC 03R .6353(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6353(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10 NCAC 03R .6353(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are

the multi-county groupings as defined in 10 NCAC 03R .6353(f).

(f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.

(g) A Medicare-certified home health agency office's service area is the Medicare-certified home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate Medicare-certified home health agency office planning area.

(h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.

(i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.

(j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6353(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6353(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6353(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6353(b).

(o) A heart-lung bypass machine's service area is the heart-lung bypass machine planning area in which the heart-lung bypass machine is located. The heart-lung bypass machine planning areas are the hospital service systems, as defined in 10 NCAC 03R .6354(a).

(p) A unit of fixed cardiac catheterization and cardiac angioplasty equipment's service area is the fixed cardiac catheterization and cardiac angioplasty equipment planning area in which the equipment is located. Each of the 100 counties in the State is a separate fixed cardiac catheterization and cardiac angioplasty equipment planning area.

(q) A unit of shared fixed cardiac catheterization and cardiac angioplasty equipment's service area is the shared fixed cardiac catheterization and cardiac angioplasty planning area in which the equipment is located. The shared fixed cardiac catheterization and cardiac angioplasty planning areas are the hospital service systems, as defined in 10 NCAC 03R .6354(a).

(r) A positron emission tomography scanner's service area and planning region is the health service area (HSA) in which the scanner is located and the planning region as defined in 10 NCAC 03R .6353(g). The health service areas are the multi-county groupings as defined in 10 NCAC 03R .6353(a).

(s) An adult care home bed's service area is the adult care home bed planning area in which the bed is located. Each of the 100 counties in the State is a separate adult care home bed planning area.

(t) An operating room's service area is the ambulatory surgical facility planning area in which the operating room is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6353(e).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1);

Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6355 REALLOCATIONS AND ADJUSTMENTS

(a) REALLOCATIONS

- (1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 03R .6356, through .6384 indicate that need exists after the inventories are revised and the need determinations are recalculated.
- (2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.
- (3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Dialysis Report.
- (4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny the application has been appealed shall not be reallocated until the appeal is resolved.
 - (A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a)(3) of this Rule.
 - (B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar

year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.

- (5) **Withdrawals and Relinquishments.** Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
- (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed;
 - (B) the date on which an appeal of the withdrawal is finally resolved against the holder; or
 - (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

- (6) **Need Determinations for which No Applications are Received**
- (A) **Services or Beds with Scheduled Review in the Calendar Year on or Before September 1:** The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.
 - (B) **Services or Beds with Scheduled Review in the Calendar Year After September 1:** Except for dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the

second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of new applications.

- (7) **Need Determinations not Awarded because Application Disapproved**
 - (A) **Disapproval in the Calendar Year prior to August 17:** Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.
 - (B) **Disapproval in the Calendar Year on or After August 17:** Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.
- (8) **Reallocation of Decertified ICF/MR Beds.** If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following Sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.

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- (A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.
 - (B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.
 - (C) The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.
- (2) Inventories shall be updated to reflect:
 - (A) decertification of Medicare-certified home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;
 - (B) delicensure of health service facilities and health service facility beds;
 - (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16) f1 and G.S. 131E-176(16) (s);
 - (D) elimination or reduction of a health service as listed at G.S. 131E-176(16) (f);
 - (E) addition or reduction in operating rooms as defined in 10 NCAC 03R .6358(b);
 - (F) psychiatric beds licensed pursuant to G.S. 131E-184(c);
 - (G) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
 - (H) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
 - (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 03R .6356 through 10 NCAC 03R .6384 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

(b) CHANGES IN NEED DETERMINATIONS

- (1) The need determinations in 10 NCAC 03R .6356 through 10 NCAC 03R .6384 shall be revised continuously by the Medical Facilities Planning Section throughout the calendar year to reflect all changes in the inventories of:

- (A) the health services listed at G.S. 131E-176 (16)f;
- (B) health service facilities;
- (C) health service facility beds;
- (D) dialysis stations;
- (E) the equipment listed at G.S. 131E-176 (16)f1;
- (F) mobile medical equipment; and
- (G) operating rooms as defined in 10 NCAC 03R .6358(b).

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 03R .6356 through .6384 shall not be reduced if the relevant inventory is adjusted upward 30 days

- (4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6356 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)

It is determined that there is need for 32 additional acute care beds in Brunswick Community Hospital's "Hospital Service System." It is determined that there is no need for additional acute care beds anywhere else in the State.

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Hospital Service System	Acute Care Bed Need Determination
Brunswick Community Hospital	32

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6357 INPATIENT REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

It is determined that there is no need for additional inpatient rehabilitation beds in any HSA.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6358 OPERATING ROOM NEED DETERMINATIONS (REVIEW CATEGORY E)

(a) It is determined that there is need for eight additional operating rooms in four Ambulatory Surgery Service Areas as follows. It is determined that there is no need for additional operating rooms anywhere else in the State.

Ambulatory Surgery Surgery Service Area	Counties	Operating Room Need Determination
8	Bladen, Cumberland, Robeson, Sampson	2
10	Buncombe, Haywood, Madison, Mitchell, Yancey	2
24	Greene, Lenoir, Martin, Pitt	1
27	Hoke, Lee, Montgomery, Moore, Richmond, Scotland	3

(b) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6359 OPEN HEART SURGERY SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is need for open heart surgery services with one heart-lung bypass machine in Robeson County. It is determined that there is no need for additional open heart surgery services anywhere else in the State.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6360 HEART-LUNG BYPASS MACHINES NEED DETERMINATIONS (REVIEW CATEGORY H)

It is determined that there is need for two additional heart-lung bypass machines in two hospital service systems as follows. It is determined that there is no need for additional heart-lung bypass machines anywhere else in the State, other than the additional heart-lung bypass machine identified as needed in 10 NCAC 03R .6359.

Hospital Service System	Heart-Lung Bypass Machine Need Determination
Pitt County Memorial	1
NorthEast Medical Center	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6361 FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)

(a) It is determined that there is a need for one additional fixed unit of cardiac catheterization/angioplasty equipment in Gaston County and for one additional fixed unit of cardiac catheterization/angioplasty equipment in Wake County. It is determined that there is no need for additional fixed units of cardiac catheterization/angioplasty equipment in any other county.

County	Fixed Cardiac Catheterization/Angioplasty Equipment Need Determination

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Gaston	1
Wake	1

- (b) Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac catheterization equipment, as that term is defined in 10 NCAC 03R .1613(14).
 (c) Mobile cardiac catheterization equipment, as defined in 10 NCAC 03R .1613(14), and services shall only be approved for development on hospital sites.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6362 SHARED FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for one unit of shared fixed cardiac catheterization/angioplasty equipment in Columbus County Hospital's "Hospital Service System." It is determined that there is no need for additional units of shared fixed cardiac catheterization/angioplasty equipment anywhere else in the State.

Hospital Service System	Shared Fixed Cardiac Catheterization/Angioplasty Equipment Need Determination
Columbus County Hospital	1

(b) Shared fixed cardiac catheterization/angioplasty equipment means fixed equipment that is used to perform both cardiac catheterization procedures and angiography procedures.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6363 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional burn intensive care services anywhere in the State.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6364 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services anywhere in the State.

(b) Allogeneic bone marrow transplants shall be provided only in facilities having the capability of doing human leucocyte antigens (HLA) matching and of management of patients having solid organ transplants. At their present stage of development it is determined that allogeneic bone marrow transplantation services shall be limited to Academic Medical Center Teaching Hospitals.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6365 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is no need for new solid organ transplantation services anywhere in the State.

(b) Solid organ transplant services shall be limited to Academic Medical Center Teaching Hospitals at this stage of the development of this service and availability of solid organs.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6366 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for an additional gamma knife anywhere in the State.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6367 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional lithotripters anywhere in the State.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6368 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for one additional Radiation Oncology Treatment Center in Radiation Oncology Treatment Center Service Area 6, provided however, that the new center shall be created by the relocation of one of the four

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linear accelerators that are currently in operation, or are approved for operation, in Radiation Oncology Treatment Center Service Area 6.

(b) It is determined that there is no need for an additional radiation oncology treatment center in any other service area in the State.

Radiation Oncology Treatment Center Service Area	Radiation Oncology Treatment Center Need Determination
6 (Cleveland, Gaston, Lincoln, Rutherford)	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

to propose a host site within each of the three HSAs constituting the region. Any applicant proposing to acquire a mobile dedicated PET scanner must demonstrate that each host site offers or contracts with a hospital that offers comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology.

10 NCAC 03R .6369 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for one mobile dedicated positron emission tomography (PET) scanner that would provide services at host sites located within Positron Emission Tomography (PET) Scanners Planning Region 1 consisting of HSAs I, II, and III, and there is a need for one mobile dedicated PET scanner that would provide services at host sites located within the Positron Emission Tomography (PET) Scanners Planning Region 2 consisting of HSAs IV, V, and VI. An applicant may propose to provide such services at host sites located anywhere within the specified region and is not required

(b) It is determined that there is no need for additional fixed dedicated PET scanners anywhere in the State.

(c) Dedicated PET Scanners are scanners used solely for PET imaging. Dedicated PET Scanners can be fixed or mobile.

(d) Mobile PET Scanner means a PET scanner and transporting equipment which is moved to provide services at two or more host facilities.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6370 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for 14 additional fixed Magnetic Resonance Imaging (MRI) Scanners based on fixed MRI Scanner utilization in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, other than the additional scanners provided in 10 NCAC 03R .6371 and 10 NCAC 03R .6372.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	Fixed MRI Scanners Need Determination
4 (Ashe, Avery, Watauga)	1
6 (Rutherford, Cleveland)	1
8 (Gaston)	2
9 (Cabarrus, Montgomery, Rowan, Stanly)	1
10 (Iredell)	1
11 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	2
13 (Caswell, Durham, Granville, Person, Vance, Warren)	1
17 (Anson, Mecklenburg, Union)	1
18 (Cumberland, Hoke, Moore, Robeson, Sampson)	2
19 (Franklin, Harnett, Johnston, Wake)	1
23 (Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington)	1

(b) Magnetic Resonance Imaging Scanners. "Fixed magnetic resonance imaging (MRI) scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10 NCAC 03R .2713(5).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6371 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION FOR A DEDICATED FIXED BREAST MRI SCANNER (REVIEW CATEGORY H)

(a) It is determined that there is a need for one dedicated fixed breast MRI scanner, exclusively used in mammographic studies in MRI Scanners Service Area 17 (Anson, Mecklenburg, Union Counties). The MRI will not be counted in the regular inventory of MRIs. The applicant shall demonstrate that the MRI scanner shall not be used for general diagnostic purposes and the projected costs for procedures to patients and payors shall be lower than the costs associated with conventional MRI procedures. It is determined that

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there is no need for an additional fixed MRI scanner in any other service area in the state other than the additional scanners provided in 10 NCAC 03R .6370 and 10 NCAC 03R .6372.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	Dedicated Fixed Breast MRI Scanner Need Determination
17 (Anson, Mecklenburg, Union)	1

(b) Magnetic Resonance Imaging Scanners. "Fixed magnetic resonance imaging (MRI) scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10 NCAC 03R .2713(5).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6372 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for four additional fixed Magnetic Resonance Imaging (MRI) Scanners based on utilization of mobile MRI Scanners in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, other than the additional scanners provided in 10 NCAC 03R .6370 and 10 NCAC 03R .6371.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	Fixed MRI Scanners Need Determination
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	1
10 (Iredell)	1
15 (Davidson, Guilford, Randolph & Rockingham)	1
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	1

(b) Magnetic Resonance Imaging Scanners. "Fixed magnetic resonance imaging (MRI) scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10 NCAC 03R .2713(5).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6373 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)

It is determined that there is no need for additional Nursing Care Beds anywhere in the State.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6374 ADULT CARE HOME BED NEED DETERMINATION (REVIEW CATEGORY B)

It is determined that the counties listed in this Rule need additional Adult Care Home Beds as specified. It is determined that there is no need for additional Adult Care Home Beds in any other county.

County	Number of Adult Care Home Beds Needed
Ashe	60
Cherokee	120
Dare	60
Gates	30
Graham	10
Greene	30
Halifax	40
Jones	30
Macon	130
Madison	20
Mitchell	80
Pender	80
Tyrrell	20

Washington	10
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History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

**10 NCAC 03R .6375 MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION
(REVIEW CATEGORY F)**

It is determined that there is a need for one Medicare-certified home health agency or office in each of the following counties. It is determined that there is no need for additional Medicare-certified home health agencies or offices in any other county.

Counties	Number of New Home Health Agencies/ Offices Needed
Montgomery	1
Pamlico	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

**10 NCAC 03R .6376 DIALYSIS STATION NEED
DETERMINATION METHODOLOGY FOR REVIEWS
BEGINNING APRIL 1, 2002**

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar year 2002, and shall make a report of such determinations available to all who request it. The first report shall be called the North Carolina January 2002 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources are as follows:

- (1) Numbers of dialysis patients as of June 30, 2001, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need (using the trend line ending with 12/31/00 data)
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1996 to the end of 2000 is multiplied by the county's June 30, 2001 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total June 30, 2002 patients.

(B) The percent of each county's total patients who were home dialysis patients on June 30, 2001 is multiplied by the county's projected total June 30, 2002 patients, and the product is subtracted from the county's projected total June 30, 2002 patients. The remainder is the county's projected June 30, 2002 in-center dialysis patients.

(C) The projected number of each county's June 30, 2002 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2002 in-center dialysis stations.

(D) From each county's projected number of June 30, 2002 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2002 projected station surplus or deficit.

(E) If a county's June 30, 2002 projected station deficit is 10 or greater and the January 2002 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2002 county station need determination is the same as the June 30, 2002 projected station deficit. If a county's June 30, 2002 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the

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- county's June 30, 2002 station need determination is zero.
- (2) Facility Need
- A dialysis facility located in a county for which the result of the County Need methodology is zero in the January 2002 Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:
- (A) Its utilization, reported in the January 2002 SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
- (i) The facility's number of in-center dialysis patients reported in the June 2001 TDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the January 2002 SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate.
- (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
- (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by 6 (the number of months from June 30, 2001 until December 31, 2001) for the January 2002 SDR.
- (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the January 2002 SDR and that product is added to such reported number of in-center patients.
- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified stations as recorded in the January 2002 SDR and the number of pending new stations for which a certificate of need has been issued. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.
- (c) The schedule for publication of the January 2002 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the April 1, 2002 Review Period shall be as follows:

Data for Period Ending	Due Date for SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Date
June 30, 2001	Nov. 12, 2001	Jan. 2, 2002	March 15, 2002	April 1, 2002

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it projects need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

(f) Home patients shall not be included in determination of need for new stations.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6377 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING OCTOBER 1, 2002

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar year 2002, and shall make a report of such determinations available to all who request it. The second report shall be called the North Carolina July 2002 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients as of December 31, 2001, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and

- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need (using the trend line ending with 12/31/01 data)
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1997 to the end of 2001 is multiplied by the county's December 31, 2001 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total December 31, 2002 patients.
 - (B) The percent of each county's total patients who were home dialysis patients on December 31, 2001 is multiplied by the county's projected total December 31, 2002 patients, and the product is subtracted from the county's projected total December 31, 2002 patients. The remainder is the county's projected December 31, 2002 in-center dialysis patients.
 - (C) The projected number of each county's December 31, 2002 in-center patients is divided by 3.2. The quotient is the projection of the county's December 31, 2002 in-center dialysis stations.
 - (D) From each county's projected number of December 31, 2002 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's December 31, 2002 projected station surplus or deficit.
 - (E) If a county's December 31, 2002 projected station deficit is ten or greater and the July 2002 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the December 31, 2002 county station need determination is the same as the December 31, 2002 projected station deficit. If a county's

December 31, 2002 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's December 31, 2002 station need determination is zero.

(2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the July 2002 SDR is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the July 2002 SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center dialysis patients reported in the January 2002 SDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the July 2002 SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate.
 - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
 - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by 12 (the number of months from December 31, 2001 until December 31, 2002) for the July 2002 SDR.
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the July 2002 SDR and that product is added to such reported number of in-center patients.
 - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified stations as recorded in the July 2002 SDR and the number of pending new stations for which a

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- (C) certificate of need has been issued. The remainder is the number of stations needed. The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the July 2002 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the October 1, 2002 Review Period shall be as follows:

Data for Period Ending	Due Date for SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Date
Dec. 31, 2001	May 10, 2002	July 1, 2002	September 16, 2002	October 1, 2002

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(f) Home patients shall not be included in determination of need for new stations.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it projects need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6378 HOSPICE HOME CARE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is a need for one additional Hospice Home Care Program in each of the following counties. It is determined that there is no need for additional Hospice Home Care Programs in any other county.

Counties	Number of New Hospice Home Care Programs Needed
Beaufort	1
Craven	1
Johnston	1
Robeson	1
Rowan	1
Wilson	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6379 SINGLE COUNTY HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that the counties listed in this Rule need additional hospice inpatient beds as specified. It is determined that there is no need for additional single county hospice inpatient beds in any other county.

County	Number of Hospice Inpatient Beds Needed
Cleveland	2
Cumberland	8
Gaston	8
Richmond	11
Rutherford	4

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6380 CONTIGUOUS COUNTY HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient facility beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to

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be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	Hospice Inpatient Bed Deficit
Alexander	1
Anson	1
Beaufort	1
Bertie	1
Bladen	1
Brunswick	1
Burke	2
Cabarrus	4
Carteret	1
Catawba	2
Columbus	1
Craven	1
Davidson	4
Davie	1
Duplin	1
Durham	5
Edgecombe	1
Granville	1
Greene	1
Halifax	1
Harnett	1
Haywood	2
Hertford	1
Hoke	1
Iredell	4
Jackson	1
Johnston	2
Lee	1
Lenoir	1
Lincoln	2
McDowell	1
Macon	1
Madison	1
Martin	1
Mitchell	1
Montgomery	1
Moore	3
Nash	2
Northampton	1
Onslow	1
Pamlico	1
Pasquotank	1
Pender	1
Person	1
Pitt	2
Polk	2
Randolph	4
Robeson	4
Rockingham	3
Rowan	4
Sampson	2
Scotland	4
Stanly	3
Stokes	2
Surry	4
Transylvania	1
Union	4

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Vance	1
Watauga	1
Wilkes	2
Wilson	1
Yadkin	1
Yancey	1

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6381 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)

It is determined that there is no need for additional psychiatric beds in any Mental Health Planning Region.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6382 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)

(a) It is determined that there is a need for four additional chemical dependency (substance abuse) residential treatment beds for adolescents in the North Central Mental Health

Planning Region. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adolescents in any other mental health planning region in the State.

(b) It is determined that there is a need for six additional chemical dependency (substance abuse) treatment beds for adults in the North Central Mental Health Planning Region. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adults in any other mental health planning region in the State, other than the additional beds provided in 10 NCAC 03R .6383.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6383 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) ADULT DETOX-ONLY BED NEED DETERMINATION (REVIEW CATEGORY C)

(a) Adult Detox-Only Beds. It is determined that there is a need for additional detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. It is determined that there is no need for additional detox-only beds for adults in any other mental health planning area, other than the additional beds provided in 10 NCAC 03R .6382.

Mental Health Planning Areas	Mental Health Planning Regions	Number of Adult Detox-Only Beds Needed
1 Smoky Mountain	W	10
2 Blue Ridge	W	10
4 Trend	W	10
5 Foothills	W	10
6 Rutherford-Polk	W	10
7 Gaston-Lincoln-Cleveland	W	10
10 Rowan-Stanly-Cabarrus-Union	W	20
11 Surry-Yadkin-Iredell	NC	10
13 Rockingham	NC	10
15 Alamance-Caswell	NC	10
16 O-P-C	NC	10
18 V-G-F-W	NC	10
19 Davidson	SC	10
21 Southeastern	SC	10
24 Johnston	SC	7
25 Wake	SC	10
26 Randolph	SC	2
29 Wayne	E	4
30 Wilson-Greene	E	10
31 Edgecombe-Nash	E	6
32 Halifax	E	10
33 Neuse	E	10

TEMPORARY RULES

34 Lenoir	E	10
36 Roanoke-Chowan	E	4
37 Tideland	E	5
38 Albemarle	E	10
39 Duplin-Sampson	E	10

(b) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.

(c) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:

- (1) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 03R .6353(c); and
- (2) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6384 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)

(a) Adult Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Adult Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

(b) Child/Adolescent Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Child/Adolescent Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6385 POLICIES FOR GENERAL ACUTE CARE HOSPITALS

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 03C .3102(d) and Section .6200.

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in Paragraph (d) of this Rule are assumed to have underutilized space. Any such hospital proposing new construction must clearly and convincingly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 03R .6356 through .6384.

- (1) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
 - (A) serves as a primary teaching site for a school of medicine and at least one

other health professional school, providing undergraduate, graduate and postgraduate education;

(B) houses extensive basic medical science and clinical research programs, patients and equipment; and

(C) serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

(2) Exemption from the provisions of 10 NCAC 03R .6356 through .6384 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

(A) necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or

(B) necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or

(C) necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(3) A project submitted by an Academic Medical Center Teaching Hospital under this policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within

20 miles of the Academic Medical Center Teaching Hospital.

- (4) Any health service facility or health service facility bed that results from a project submitted under this policy after January 1, 1999 shall be excluded from the inventory of that health service facility or health service facility bed in the State Medical Facilities Plan.

(d) **Reconversion to Acute Care.** Facilities that have redistributed beds from acute care bed capacity to psychiatric, rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 03R .6356.

Licensed Acute Care Bed Capacity	Percent Occupancy
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(e) **Replacement of Acute Care Bed Capacity.** The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets which follow. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

Total Licensed Acute Care Beds	Target Occupancy (Percent)
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(f) **Heart-Lung Bypass Machines for Emergency Coverage.** To protect cardiac surgery patients, who may require emergency procedures while scheduled procedures are underway, a need is determined for one additional heart-lung bypass machine whenever a hospital is operating an open heart surgery program with only one heart-lung bypass machine. The additional machine is to be used to assure appropriate coverage for emergencies and in no instance shall this machine be scheduled for use at the same time as the machine used to support scheduled open heart surgery procedures. A certificate of need application for a machine acquired in accordance with this provision shall be exempt from compliance with the performance standards set forth in 10 NCAC 03R .1715(2).

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b)
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6389 POLICIES FOR NURSING CARE FACILITIES

(a) Provision Of Hospital-Based Nursing Care.

- (1) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth in this Rule and in 10 NCAC 03R .1100, to convert up to 10 beds from its licensed acute care bed capacity for use as hospital-based nursing care beds without regard to determinations of need in 10 NCAC 03R .6373 if the hospital:
- (A) is located in a county which was designated as non-metropolitan by the U.S. Office of Management and Budget on January 1, 2002; and
 - (B) on January 1, 2002, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Health and Human Services determines that the hospital is meeting the conditions outlined in 10 NCAC 03R .6389(a);

- (2) "Hospital-based nursing care" is defined as nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Nursing care beds developed under 10 NCAC 03R .6389(a) are intended to provide placement for residents only when placement in other nursing care beds is unavailable in the geographic area. Hospitals which develop nursing care beds under 10 NCAC 03R .6389(a) shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities;
- (3) For purposes of 10 NCAC 03R .6389(a), beds in hospital-based nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Nursing care beds in a "distinct part" shall be converted from the existing licensed acute care bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 03R .6385(d), without regard to the

- acute care bed need shown in 10 NCAC 03R .6356;
- (4) A certificate of need issued for a hospital-based nursing care unit shall remain in force as long as the following conditions are met:
- (A) the nursing care beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
 - (B) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law; and
 - (C) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the nursing care unit;
- (5) The granting of beds for hospital-based nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need;
- (6) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:
- (A) applies for and receives a certificate of need for nursing care bed need determinations in 10 NCAC 03R .6373; or
 - (B) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
 - (C) currently operates nursing care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based nursing care beds under 10 NCAC 03R .6389(a). Hospitals designated by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated nursing care beds under provisions of G.S. 131E-175 through G.S. 131E-190, may apply to develop beds under 10 NCAC 03R .6389(a). However, such hospitals shall not develop nursing care beds both to meet needs determined in 10 NCAC 03R .6373 and 10 NCAC 03R .6389(a);
- (7) Beds certified as a "distinct part" under 10 NCAC 03R .6389(a) shall be counted in the inventory of existing nursing care beds and used in the calculation of unmet nursing care bed need for the general population of a planning area. Applications for certificates of need pursuant to 10 NCAC 03R .6389(a) shall be accepted only for the March 1 review cycle. Nursing care beds awarded under 10 NCAC 03R .6389(a) shall be deducted from need determinations for the county as shown in 10 NCAC 03R .6373. The Department of Health and Human Services shall monitor this program and ensure that patients affected by 10 NCAC 03R .6389(a) are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.
- (b) Plan Exemption For Continuing Care Retirement Communities.
- (1) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in 10 NCAC 03R .6373. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:
 - (A) Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
 - (i) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms; and
 - (ii) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort;
 - (B) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring

nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract;

- (C) Reflects the number of nursing care beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care; and
 - (D) Will not be certified for participation in the Medicaid program;
- (2) One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. All nursing care beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

(c) **Determination Of Need For Additional Nursing Care Beds In Single Provider Counties.** When a nursing care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing care beds in order to bring the minimum number of nursing care beds available within the county to no more than 80 nursing care beds without regard to the nursing care bed need determination for that county as listed in 10 NCAC 03R .6373.

(d) **Relocation Of Certain Nursing Facility Beds.** A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part A, provided that the conditions set forth in 10 NCAC 03R .6389(d) and in 10 NCAC 03R .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
 - (A) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
 - (B) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (C) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (D) the nursing facility is expected to serve followers of the specified

religion from a multi-county area; and

- (E) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10 NCAC 03R .6373 shall be granted to a nursing facility for purposes of relocating existing licensed nursing care beds to another county provided that it complies with all of the criteria listed in 10 NCAC 03R .6389(d)(1)(A) through (E).
 - (3) Any certificate of need issued under 10 NCAC 03R .6389(d) shall be subject to the following conditions:
 - (A) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make acceptable discharge arrangements for residents not desiring to transfer to the new facility;
 - (B) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
 - (C) subsequent to providing the letter to the Licensure and Certification Section described in 10 NCAC 03R .6389(d)(3)(B), the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

(e) **Transfer Of Nursing Facility Beds From State Psychiatric Hospital Nursing Facilities To Community Facilities.**

- (1) Beds in State Psychiatric Hospitals that are certified as nursing facility beds may be relocated to licensed nursing facilities. However, before nursing facility beds are transferred out of the State Psychiatric Hospitals, appropriate services shall be available in the community. State hospital nursing facility beds that are relocated to licensed nursing facilities shall be closed within 90 days following the date the transferred beds become operational in the community. Licensed nursing facilities proposing to operate transferred nursing facility beds shall commit to serve the type of residents who are normally placed in nursing facility beds at the State psychiatric hospitals. To help ensure that relocated nursing facility

beds will serve those persons who would have been served by State psychiatric hospitals in nursing facility beds, a certificate of need application to transfer nursing facility beds from a State hospital shall include a written memorandum of agreement between the Director of the applicable State psychiatric hospital; the Chief of Adult Community Mental Health Services and the Chief of Institutional Services in the Division of MH/DD/SAS; the Secretary of Health and Human Services; and the person submitting the proposal.

- (2) 10 NCAC 03R .6389(e) does not allow the development of new nursing care beds. Nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10 NCAC 03R .6389(e)(1) shall be excluded from the inventory.

(f) Relocation Of Nursing Facility Beds. Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in 10 NCAC 03R .6389(d). Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins; and
- (2) demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6390 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES ADULT CARE HOME BEDS

(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for adult care without regard to the adult care home bed need shown in 10 NCAC 03R .6374. To qualify for such exemption, applications for certificates of need shall show that the proposed adult care home bed capacity:

- (1) Will only be developed concurrently with, or subsequent to, construction on the same site of independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms;

- (2) Will provide for the provision of nursing services, medical services, or other health related services as required for licensure by the Department of Insurance;
 - (3) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing or adult care unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the adult care home unit at the time the other spouse or sibling moves into a non-nursing or adult care unit, or when the medical condition requiring nursing or adult care home care was not known to exist or be imminent when the individual became a party to the continuing care contract;
 - (4) Reflects the number of adult care home beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional adult care home care; and
 - (5) Will not participate in the Medicaid program or serve State-County Special Assistance recipients.
- (b) One half of the adult care home beds developed under this exemption shall be excluded from the inventory used to project adult care home bed need for the general population.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002.*

10 NCAC 03R .6391 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES

(a) Need Determination Upon Termination of County's Sole Medicare-Certified Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of Medicare-Certified home health services and to decertify the office; and

- (1) the agency is the only Medicare-Certified home health agency with an office physically located in the county; and
- (2) the agency is not being lawfully transferred to another entity;

need for a new Medicare-Certified home health agency office in the county is thereby established through this Paragraph. Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one Medicare-Certified home health agency office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to Medicare-Certified home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

(b) Need Determination for at Least One Medicare-Certified Home Health Agency per County. When a county has no Medicare-Certified home health agency office physically located within the county's borders, need for a new Medicare-Certified home health agency office in the county is thereby established through this paragraph.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6392 POLICY FOR RELOCATION OF DIALYSIS STATIONS

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Dialysis Report, and
- (2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Dialysis Report.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6393 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES

(a) Transfer of Psychiatric Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before psychiatric beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital psychiatric beds which are relocated to community facilities shall be closed within 90 days following the date the transferred psychiatric beds become operational in the community. Facilities proposing to operate transferred psychiatric beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated psychiatric beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer psychiatric beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the psychiatric beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 03R

.6385(d) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6394 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for chemical dependency treatment beds, as defined in G. S. 131E-176(5b), shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

10 NCAC 03R .6395 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for intermediate care beds for the mentally retarded shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002.

Rule-making Agency: DHHS-Division of Medical Assistance

Rule Citation: 10 NCAC 26D .0116

Effective Date: January 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d)

Reason for Proposed Action: This change is based on recent General Assembly legislation to implement reduction number 33 of the Conference Report on the Continuation, Capital, and Expansion Budget. This change increases co-payments for brand name prescription drugs from \$1 to \$3 per prescription. Co-payments for generic prescriptions remain at \$1 per prescription.

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603.*

CHAPTER 26 – MEDICAL ASSISTANCE

**SUBCHAPTER 26D – LIMITATIONS ON AMOUNT:
DURATION: AND SCOPE**

10 NCAC 26D .0116 CO-PAYMENT

(a) Co-payment Requirements. The following requirements are imposed on all Medicaid recipients for the following services:

- (1) Outpatient Hospital Services. Co-payment will be charged at the rate of three dollars (\$3.00) per outpatient visit.
- (2) Chiropractic Services. Co-payment will be charged at the rate of one dollar (\$1.00) per chiropractic visit.
- (3) Podiatric Services. Co-payment will be charged at the rate of one dollar (\$1.00) per podiatric visit.
- (4) Optometric Services. Co-payment will be charged at the rate of two dollars (\$2.00) per optometric visit.
- (5) Optical Supplies and Services. Co-payment will be charged at the rate of two dollars (\$2.00) per item. Co-payment for repair of eyeglasses and other optical supplies will be charged at the rate of two dollars (\$2.00) per repair exceeding five dollars (\$5.00).
- (6) Prescribed Drugs. Co-payment will be charged at the rate of one dollar (\$1.00) per dispensing for Generic drugs and three dollars (\$3.00) for dispensing for Brand Name drugs, including refills.
- (7) Dental Services. Co-payment will be charged at the rate of three dollars (\$3.00) per visit, except when more than one visit is required. If more than one visit is required but the service is billed under one procedure code with one date of service, then only one co-payment shall be collected. Full and partial dentures are examples.
- (8) Physicians. Co-payment will be charged at the rate of three dollars (\$3.00) per visit.

(b) Co-payment Exemptions. No co-payment will be charged for the following services:

- (1) EPSDT related services;
- (2) Family Planning Services;
- (3) Services in state owned mental hospitals;
- (4) Services covered by both Medicare and Medicaid;
- (5) Services to persons under age 21;
- (6) Services related to pregnancy;
- (7) Services provided to residents of ICF, ICF-MR, SNF, Mental Hospitals; and
- (8) Hospital emergency room services.

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d);

Tax Equity and Fiscal Responsibility Act of 1982, Subtitle B; Section 95 of Chapter 689, 1991 Session Laws; Eff. January 1, 1984;
Temporary Amendment Eff. August 15, 1991 For a Period of 180 Days to Expire on February 15, 1992;
Amended Eff. February 1, 1992;
Temporary Amendment Eff. September 15, 1992 For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Amended Eff. February 1, 1993;
Temporary Amendment Eff. January 1, 2002.

TITLE 12 – DEPARTMENT OF JUSTICE

Rule-making Agency: *NC State Bureau of Investigation*

Rule Citation: *12 NCAC 04E .0104*

Effective Date: *January 14, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 114-10 (6)*

Reason for Proposed Action: *On October 28, 1999 the US Department of Justice changed 28 CFR 20.33 to allow national criminal history record information to non-criminal justice governmental agencies performing criminal justice dispatching function or data processing/information services for criminal justice agencies. This access, previously limited only to authorized law enforcement and criminal justice agencies, will now allow city/country 911 communication centers full access to the National Crime Information Center, which is a subdivision of the FBI. 12 NCAC 04E .0104 was written using the old language of the federal CFR and, in its current form, prevents the SBI from opening the access to these communication centers now allowed under federal regulations. In order to allow this access, an immediate temporary change must be made to NCAC, while a permanent rule change is sought. By allowing this rule change, law enforcement agencies statewide will have access to critical records that were previously unavailable to their communication centers. With the heightened awareness of terrorism and war across the nation this will allow North Carolina law enforcement officers a safer environment when investigating crimes, responding to request for service, and initiating motor vehicle traffic stops. With this rule change, at least 38 communications centers throughout the state will be allowed full access to NCIC, again, improving officer safety and public safety efficiency. There will be no known direct cost associated with this rule change, other than those necessary and required in the filing and notification procedures associated with any standard rule change. The State Bureau of Investigation intends to notify all users statewide by sending a statewide computer message and including a posting in the statewide law enforcement electronic newsletter (available to all law enforcement computer terminal users statewide on a monthly basis). This newsletter is maintained online for 12 months and is free of charge to users.*

Comment Procedures: *Written comments should be directed to Special Agent in Charge Donald K. Roberts, NC State Bureau of Investigation, 3220 Garner Road, Raleigh, NC 27626-0500.*

CHAPTER 04 – DIVISION OF CRIMINAL INFORMATION

SUBCHAPTER 04E – ORGANIZATIONAL RULES AND FUNCTIONS

SECTION .0100 – GENERAL PROVISIONS

12 NCAC 04E .0104 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

- (1) "Administration of Criminal Justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, and correctional supervision or rehabilitation of accused criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.
- (2) "Administrative Message" means messages that may be used by DCI terminal operators to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of NLETS.
- (3) "Authorized Requestor" means any person who is authorized and approved to receive state and national criminal history data by virtue of being:
 - (a) a member of an approved law enforcement/criminal justice agency pursuant to Rule .0201 of this Subchapter; or
 - (b) any DCI or NCIC authorized non-criminal justice agency pursuant to local ordinance or a state or federal law.
- (4) "Automated Fingerprint Identification System" (AFIS) means a computer based system for reading, encoding, matching, storage and retrieval of fingerprint minutiae and images.
- (5) "CCH" means computerized criminal history.
- (6) "Convicted" or "conviction" means for purposes of DCI operator certification, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.

- (7) "Criminal History Record Information" (CHRI) means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This also includes any disposition, sentencing, correctional supervision, and release information. This term does not include identification information such as fingerprint records to the extent that such information does not indicate formal involvement of the individual in the criminal justice system.
- (8) "Criminal Justice Agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates over 50 percent of its annual budget to the administration of criminal justice.
- (9) "Criminal Justice Board" means a board composed of heads of law enforcement/criminal justice agencies which have management control over a communications center.
- (10) "DCI" means Division of Criminal Information.
- (11) "DCI Manual" means a manual containing guidelines for users on the operation of the DCI equipment and providing explanations as to what information may be accessed through the DCI.
- (12) "Direct Access" means an authorized agency has access to the DCI network through a DCI terminal or through a computer interface.
- (13) "Disposition" means information on any action which results in termination or indeterminate suspension of the prosecution of a criminal charge.
- (14) "Driver's History" means information maintained on individual operators to include name, address, date of birth, license issuance and expiration information or control number issuance information, and moving vehicle violation convictions.
- (15) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.
- (16) "DMV" means the North Carolina Division of Motor Vehicles.
- (17) "Expunge" means to remove criminal history record information from the DCI and FBI computerized criminal history and identification files pursuant to state statute.
- (18) "Full Access" means the ability of a terminal to access those programs developed and administered by the DCI for local law enforcement and criminal justice agencies specifically including state and national CCH and driver history access. This also includes

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- non-criminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies.
- (19) "Full-certification" means being operator certified with the ability and knowledge to use the DCI terminal accessing those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies.
- (20) "Hardware" means the physical computer equipment or devices and the peripheral equipment forming the DCI information processing system including the Automated Fingerprint Identification System (AFIS).
- (21) "Hot Files" means DCI/NCIC files which contain information on stolen and recovered property and wanted/missing persons as entered by agencies across the nation.
- (22) "Inappropriate Message" means any message which is incomplete, unnecessary, excessive, abusive, or not in keeping with the rules and regulations of DCI.
- (23) "Incident Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.
- (24) "Indirect Access" means access to DCI through another agency's direct access terminal.
- (25) "In-service Certification" means an operator's certification program provided by local departments and approved by DCI to certify and re-certify their employees.
- (26) "Interstate Identification Index (III)" means the FBI's files containing identifying information on persons who have been arrested in the United States for which fingerprints have been submitted to and retained by the FBI.
- (27) "Interface" means a method (either software or hardware) to communicate between two computers or computer systems.
- (28) "IRKS" means an internal records keeping system which DCI makes available to North Carolina criminal justice agencies. Included in IRKS is a jail record keeping system (JRKS).
- (29) "JRKS" means a jail record keeping system that aids agencies in accounting for their jail detainees.
- (30) "Limited Access" means the ability of a terminal to access those programs which are developed and administered by the DCI for local law enforcement and criminal justice agencies specifically excluding state and national CCH.
- (31) "National Fingerprint File (NFF)" means an FBI maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level. Arrest fingerprint cards from the same state for subsequent arrests as well as final dispositions and expungements will be maintained at the state level.
- (32) "NCIC" means the National Crime Information Center which is maintained in Washington, D.C. by the FBI.
- (33) "Need-to-know" means for purposes of the administration of criminal justice or for purposes of criminal justice agency employment.
- (34) "NLETS" means National Law Enforcement Telecommunications System, which is maintained in Phoenix, Arizona.
- (35) "Non-criminal Justice Agency" means any agency created by law with the statutory authority to access State Bureau of Investigation criminal history files for purposes of non-criminal justice licensing or employment, a non-criminal justice governmental agency performing a non-criminal justice function, a governmental agency performing data processing/information services for a criminal justice agency, or a private contractor pursuant to a specific agreement with a criminal justice agency or a non-criminal justice agency previously described.
- (36) "Non-criminal Justice Information" means information that does not directly pertain to the necessary operation of a law enforcement/criminal justice agency.
- (37) "Official Record Holder" means the eligible agency that maintains the master documentation and all investigative supplements of the hot file entry.
- (38) "Operator Identifier" means a unique identifier assigned by DCI to all certified operators which is used for gaining access to the DCI network and for the identification of certified operators.
- (39) "Ordinance" means a rule or law promulgated by a governmental authority especially one adopted and enforced by a municipality or other local authority.
- (40) "ORI" means originating routing identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice agency, identifying that agency in all computer transactions.
- (41) "Private Agency" means any agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.
- (42) "Re-certification" means renewal of an operator's initial certification every 24 months.
- (43) "Right-to-know" means for the right of an individual to inspect his or her own record or for other purposes as set forth by statute or court order.
- (44) "Secondary Dissemination" means the transfer of CCH/CHRI information to anyone legally

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- entitled to receive such information who is outside the initial user agency.
- (45) "Servicing Agreement" means an agreement between a terminal agency and a non-terminal agency to provide DCI terminal services.
- (46) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.
- (47) "Statute" means a law enacted by a state's legislative branch of government.
- (48) "Switched Message" means messages that may be used by DCI terminal personnel to exchange official information between law enforcement/criminal justice agencies within North Carolina.
- (49) "Terminal" means a video screen with a typewriter keyboard used by DCI to accomplish message switching, DMV inquiries, functional messages, and DCI, NCIC, NLETS on-line file transactions.
- (50) "Terminal Agency" means any agency that has obtained a DCI terminal.
- (51) "UCR" means a Uniform Crime Reporting program to collect a summary of criminal offense and arrest information.
- (52) "Unapproved need-to-know" means any reason for requesting criminal or driver's history data which is not within the scope of authorized purpose codes as defined in the DCI on-line manual.
- (53) "User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules and regulations.

History Note: Authority G.S. 114-10; 114-10.1; Eff. November 1, 1991; Amended Eff. August 1, 1998; October 1, 1995; October 1, 1994; Temporary Amendment Eff. January 14, 2002.

TITLE 13 – DEPARTMENT OF LABOR

Rule-making Agency: *NC Department of Labor*

Rule Citation: *13 NCAC 20 .0101*

Effective Date: *January 16, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 95-126; 95-131*

Reason for Proposed Action: *The General Assembly enacted legislation amending G.S. 95-230 to establish procedural and other requirements for the administration of controlled substance examination and to allow employers to collection the oral fluids of examinees as samples in connection with examinations and screenings for controlled substances. G.S. 95-*

230 Section 66(b) mandates that the Department of Labor adopt temporary rules allowing the collection of "oral fluids" within 30 days of the effective date of this act. The Act was signed into law on December 16, 2001.

Comment Procedures: *All interested and potentially affected persons are encouraged to make their views known by submitting written comments to Barbara A. Jackson, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601.*

CHAPTER 20 – CONTROLLED SUBSTANCES EXAMINATION REGULATION

SECTION .0100 - DEFINITIONS

13 NCAC 20 .0101 DEFINITIONS

As used in G.S. 95, Article 20 and this Chapter:

- (1) "All actions" means procedures performed on the examinee's urine or blood to detect, identify, or measure controlled substances. Examples include, but are not limited to, "examinations and screening for controlled substances," "controlled substances testing," "drug testing," "screening," "screening test," "confirmation," and "confirmation test".
- (2) "Chain of custody" means the process of establishing the history of the physical custody or control of the sample from the time the examiner provides the container for the sample to the examinee through the later of:
 - (a) The reporting of the negative result to the examiner;
 - (b) The 90 day period specified in G.S. 95-232(d); or
 - (c) The completion of the retesting described in G.S. 95-232(f).
- (3) "On-site" means any location, other than an approved laboratory, at which a screening test is performed on prospective employees. For example, "on-site" locations include, but are not limited to, the examiner's place of business or a hospital, physician's office, or third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations.
- (4) "Sample" means the examinee's urine or blood or oral fluids obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing.
- (5) "Employer or person charged" means an examiner found by the Commissioner to have violated G.S. 95, Article 20.

History Note: Authority G.S. 95-231; 95-232; 95-234; Eff. April 1, 2001; Temporary Amendment Eff. January 16, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: DENR

Rule Citation: 15A NCAC 09C .1201-.1226

Effective Date: December 21, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113-35 (a)

Reason for Proposed Action: To initiate rules to provide for public safety and appropriate use of the Dupont State Forest.

Comment Procedures: The public is invited to make comments on the rules. Contact John Pearson or Ed Goforth, (828) 251-6509.

CHAPTER 09 – DIVISION OF FOREST RESOURCES

SUBCHAPTER 09C – DIVISION PROGRAMS

SECTION .1200 - DUPONT STATE FOREST

15A NCAC 09C .1201 PURPOSE

- (a) This Section coordinates all uses of Dupont State Forest in order to promise its best use for the most people.
- (b) Dupont State Forest is located in southwest Henderson and northeast Transylvania Counties in western North Carolina.

History Note: Authority G.S. 113-8; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1202 DEFINITIONS OF TERMS

Whenever used in this section:

- (1) "Bridle Trail" means any trail maintained for persons riding on horseback.
- (2) "Public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.
- (3) "Hiking Trail" means any trail maintained for pedestrians.
- (4) "Bathing Area" means any beach or water area designated by the department as a bathing area.
- (5) "Permit" means any written license issued by or under the authority of the department permitting the performance of a specified act or acts.
- (6) "Group" means a number of individuals related by a common factor, having structured organization, defined leadership, and whose activities are directed by a charter or written bylaws.

History Note: Authority G. S. 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1203 PERMITS

(a) A permit authorizes an act only when that act strictly conforms with the terms contained on the permit, or in applicable rules, and with existing state laws.

(b) Any violation of the permit constitutes grounds for its revocation by the department. In case of revocation the permit holder shall forfeit to the department all money for the permit. Furthermore, the department shall consider the permit holder, together with his agents and employees who violated such terms, jointly and severally liable to the department for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, nor both, in any manner relieves such person from statutory punishment for any violation of a provision of any state forest rule.

(c) A permit may be issued to a person or a group as defined in Rule .1202 of this Section engaged in an activity whose purpose is civic, educational, scientific, or non-profit; to government entities engaged in training activities; or to persons or groups performing volunteer maintenance activities on the forest that are authorized in advance by the forest supervisor.

(d) Applications for permits shall be made at the State Forest Office during business hours.

History Note: Authority G.S. 113-8; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1204 ROCK OR CLIFF CLIMBING AND RAPPELLING

A person shall not engage in rock or cliff climbing or rappelling in Dupont State Forest, except at designated areas and only after obtaining a special use permit from a forest official. Application for permits may be made as provided by Rule .1203 of this Section.

History Note: Authority G.S. 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1205 BATHING OR SWIMMING

(a) A person shall not dive or jump from any falls or rocks or overhangs into any body of water.

(b) A person shall not bathe, wade, or swim in any body of water in the Forest, except at such times and in such places as the Division may designate as swimming areas.

(c) Public Nudity

(1) Public nudity, including public nude bathing, is prohibited in all of Dupont State Forest lands or waters. This Rule does not apply to the enclosed portions of bathhouses, restrooms, tents and recreational vehicles.

(2) Children under the age of five are exempt from this restriction.

History Note: Authority G. S. 14-190.9; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1206 HUNTING

(a) Hunting Restricted. A person shall not hunt any wild bird or wild animal in the State Forest, except that:

(1) a person may hunt game birds or game animals:

- (A) during open seasons prescribed by the North Carolina Wildlife Resources Commission; and
 - (B) provided that he has a valid game lands use permit in addition to an appropriate hunting or sportsman's license.
- (2) Safety Requirements. A hunter shall not:
- (A) be under the influence of alcohol;
 - (B) discharge a firearm or bow and arrow from a vehicle, or within 150 yards of any building or designated camping area, or within, into, or across a posted safety zone;
 - (C) discharge a firearm within, into, or across a posted restricted zone;
 - (D) drive a motorized vehicle other than on roads and trails maintained for vehicular use, or in excess of 20 miles per hour; and
 - (E) obstruct a state forest road or trail.

(b) Tree Stands. Hunters shall not erect or occupy any tree stand attached to any tree, unless they use a portable stand that leaves no metal in the tree.

(c) Trapping. A person may trap furbearing animals during open seasons, except in posted safety zones, provided that he has a valid game lands permit and trapping license, and provided that he obeys all state laws, rules and regulations.

*History Note: Authority G.S. 113-8; 113-34; 113-35; 113-264(a);
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1207 FISHING

A person may fish in any stream in Dupont State Forest provided that he has a valid state or county fishing license, and provided that he obeys all state fishing laws, rules and regulations.

*History Note: Authority G.S. 113-8; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1208 ANIMALS AT LARGE

No person shall have any dog, cat or other pet upon Dupont State Forest unless the animal is on a leash no longer than six feet and under the control of the owner or some other person. No dog, cat or other pet shall be allowed to enter the toilet or bathhouse on Dupont State Forest except assistance animals for persons with disabilities.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1209 BOATING

(a) Privately owned boats or canoes may be operated in any waters on Dupont State Forest, provided they are manually operated or propelled by means of oars, paddles or electric trolling motors. Boats with gas motors attached are prohibited on any waters of the forest, except for use by rescue squads, diving teams, or other organizations conducting emergency operations.

(b) Operation of boats or canoes within 50 yards of the water intake on Lake Julia is prohibited.

(c) Operation of any watercraft on or over waterfalls is prohibited.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1210 CAMPING

No person shall spend the night or maintain a camp in Dupont State Forest except under permit, and at such places and for such periods as may be designated. Application for permits may be made as provided by Rule .1203 of this Section.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1211 SPORTS AND GAMES

No games or athletic contests shall be allowed except in places as may be designated.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1212 HORSES

(a) No person shall use, ride or drive a horse except to, from, or along a bridle path or other designated area.

(b) Each user shall remove from designated parking areas all residues (including manure) generated by his/her horse.

(c) When dismounted, horses shall be tied in such a manner as to prevent damage to trees or any other plants.

(d) When crossing rivers or streams, horse use shall be confined to bridges or culverts if available.

(e) Users shall possess valid Coggins papers for each horse and make them available for inspection upon request.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1213 BICYCLES

(a) No person shall use or ride a bicycle except on a road or trail authorized for use by motor vehicles or specifically designated as a bicycle trail.

(b) When crossing rivers or streams, bicycle use shall be confined to bridges or culverts if available.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1214 EXPLOSIVES

No person shall carry or possess any explosives or explosive substance including fireworks upon Dupont State Forest. This does not apply to employees of the department when they engage in construction or maintenance of the area.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001.*

15A NCAC 09C .1215 FIREARMS

No person except authorized forest law enforcement officers of the department, game protectors, and bona fide peace officers on

official duty shall carry or possess firearms of any description, or air guns or pellet guns, on or upon Dupont State Forest except properly licensed hunters that meet the requirements of Rule .1206 of this Section.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1216 FIRES

No person shall build or start a fire in any area unless that area is designed for such purpose. These areas include fireplaces and grills made for this purpose.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1217 DISORDERLY CONDUCT

No person visiting on Dupont State Forest shall disobey a lawful order of a state forest supervisor, ranger, assistant ranger, or law enforcement officer or endanger or disrupt others.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1218 INTOXICATING BEVERAGES AND DRUGS

No person shall use or be intoxicated or under the influences of intoxicants, marijuana, or non-prescribed narcotic drugs as defined in G.S. 90-87. The public display or use of beer, wine, whiskey, other intoxicating beverages, marijuana or non-prescribed narcotic drugs is hereby prohibited.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1219 COMMERCIAL ENTERPRISES

No person, being without a permit, shall in or on Dupont State Forest, sell or offer for sale, hire, or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business. Application for permits may be made as provided by Rule .1203 of this Section.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1220 NOISE REGULATION

The production or emission in Dupont State Forest by any person of noises, amplified speech, music or other sounds that annoy, disturb or frighten forest users, in the opinion of a Division of Forest Resources employee, is prohibited.

History Note: Authority G.S. 113-34; 113-35; 113-264(a); Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1221 MEETINGS AND EXHIBITIONS

A person shall not hold any meetings or exhibitions, perform any ceremony, or make any speech, on Dupont State Forest without a permit. Application for permits may be made as provided by Rule .1203 of this Section.

History Note: Authority G.S. 113-35;

Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1222 ALMS AND CONTRIBUTIONS

A person shall not solicit alms or contributions for any purpose within Dupont State Forest, unless approved by the Division of Forest Resources, and such contributions will be used to benefit the forest.

History Note: Authority G.S. 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1223 AVIATION

(a) Except as noted in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land or cause to descend or alight, ascend or take off within or upon any Dupont State Forest area, any airplane, flying machine, balloon, parachute, glider, hang glider, or other apparatus for aviation. Voluntarily in this connection shall mean anything other than a forced landing.

(b) In forest areas where aviation activities are part of the planned forest activities, a special use permit will be required. Application for permits may be made as provided by Rule .1203 of this Section.

(c) Emergency aircraft such as air ambulances and fire fighters are exempt from this Rule.

History Note: Authority G.S. 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1224 EXPULSION

For violation of the rules in this Section, the department may withdraw the right of a person or persons to remain in Dupont State Forest.

History Note: Authority G.S. 113-8; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1225 MOTORIZED VEHICLES: WHERE PROHIBITED

A person shall not drive a motorized vehicle in the forest within or upon a safety zone, walk, bridle trail, fire trail, service road, or any part of the forest not designated for such purposes. Motor bikes, mini-bikes, all terrain vehicles, and unlicensed motor vehicles are prohibited within the forest.

History Note: Authority G.S. 113-35; Temporary Adoption Eff. December 21, 2001.

15A NCAC 09C .1226 FLOWERS: PLANTS: MINERALS: ETC.

(a) A person shall not remove, destroy or injure any tree, flower, artifact, fern, shrub, rock or other plant or mineral in any forest area. Silvicultural activities performed in accordance with the Dupont State Forest Management Plan, as approved by the Director of the Division of Forest Resources, are exempt from this Rule.

(b) A person shall not collect plants, animals, minerals or artifacts from any forest area without first having obtained a collector's permit. Application for permits may be made as provided by Rule .1203 of this Section.

History Note: Authority G.S. 113-35;

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Temporary Adoption Eff. December 21, 2001.

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 19A .0901-.0907*

Effective Date: *January 10, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 130A-149*

Reason for Proposed Action: *Recent bioterrorism in this country necessitates the creation and active maintenance of a Biological Agent Registry in North Carolina. Such a registry will make it easier for the Department of Health and Human Services to track and otherwise account for biological agents in the state, as well as investigate suspected or confirmed instances of bioterrorism.*

Comment Procedures: *Written comments concerning this rule-making action may be submitted after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.*

CHAPTER 19 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A – COMMUNICABLE DISEASE CONTROL

SECTION .0900 - BIOLOGICAL AGENT REGISTRY

15A NCAC 19A .0901 GENERAL

The biological agent registry established by G.S. 130A-149 is administered by the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0902 BIOLOGICAL AGENTS TO BE REPORTED

The biological agents that shall be reported to the registry shall be those agents listed as select agents in 42 C.F.R. Part 72, Appendix A which is adopted herein by reference including subsequent amendments and editions. Copies of this federal provision may be inspected at and copies obtained from the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603, at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0903 WHEN TO REPORT

A person possessing and maintaining a listed biological agent on the effective date of these Rules shall make a report within 45 days of the effective date of these Rules. A person who does not possess and maintain any listed biological agents on the effective date of these Rules shall make a report within seven days of receipt of such agents. A person shall make an amended report within seven days of any change in the information contained in the report. A person shall make a report within 24 hours of any suspected release, loss or theft of any listed biological agent.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0904 WHAT TO REPORT

The report shall be made on a form created by the Department and shall identify the listed biological agents possessed and maintained at the facility; shall specify the use of the agents for vaccine production, research purposes, quality control or other use; shall indicate the form of the agents; shall identify the physical location of the laboratories and the storage areas; and shall identify the person in charge of the agents.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0905 EXEMPTION FROM REPORTING

A person who detects a listed biological agent in a clinical or environmental sample for the purpose of diagnosing disease, epidemiological surveillance, exposure assessment, reference, verification or proficiency testing, and who discards the agent within 14 calendar days of receiving notice of the completion of confirmation testing, or discards the agent within 14 calendar days of using the agent for reference, verification or proficiency testing, is not required to make a report.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0906 SECURITY

All persons possessing and maintaining a listed biological agent must demonstrate compliance with all safeguards contained in 42 C.F.R. Part 72 and the rules promulgated thereunder, and must employ those federal safeguards over the agents they possess and maintain, regardless of whether the mere possession of the agent is itself required to be registered under federal law. The safeguards contained in 42 C.F.R. Part 72 and the rules promulgated thereunder are adopted herein by reference including subsequent amendments and additions. Copies of this federal provision may be inspected at and copies obtained from the N.C. Department of Health and Human Services, Division of Public Health, Epidemiology Section, 225 N. McDowell Street, Raleigh, N.C. 27603, at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.

History Note: Authority G.S. 130A-149; Temporary Adoption Eff. January 10, 2002.

15A NCAC 19A .0907 RELEASE OF INFORMATION

The Department shall release information contained in the Biological Agents Registry only by order of the State Health

Director upon a finding that the release is necessary for the conduct of a communicable disease investigation or for the investigation of a release, theft or loss of a biological agent.

History Note: Authority G.S. 130A-149;
Temporary Adoption Eff. January 10, 2002.

TITLE 18 – SECRETARY OF STATE

Rule-making Agency: *Secretary of State*

Rule Citation: 18 NCAC 06 .1417, .1501, .1702-.1703, .1706-.1707, .1710-.1717

Effective Date: *January 14, 2002 for 18 NCAC 06 .1501, .1702-.1703, .1706-.1707, .1710-.1717*

Effective Date: *January 15, 2002 for 18 NCAC 06 .1417*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 78A-36, 78A-49, 78A-56, 78C-16, 78C-20, 78C-30*

Reason for Proposed Action:

18 NCAC 06 .1417 – *S.L. 2001, c. 225 created a new G.S. 78A-36.1, which contained an abbreviated procedure for registration available for Canadian broker dealers and securities salesmen servicing clients who had moved into North Carolina.*

18 NCAC 06 .1501 - *S.L. 2001, c. 183 amended G.S. 78A-56 to require that persons electing to make rescission offers pursuant to the provisions of Section 78A-56 file a written copy of the rescission offer with the Securities Division at least 10 days prior to sending the offer to investors.*

18 NCAC 06 .1702-.1703, .1706-.1707, .1710-.1716 – *S.L. 2001, c. 273, s. 4 amended G.S. 78C-20 to provide that "[a] ll applications for initial and renewal registrations or notice filings required under G.S. 78C-17 shall be filed with the Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers." The IARD is an internet-based, centralized registration network created by the Securities and Exchange Commission ("SEC"), the NASD, and the North American Securities Administrators Association ("NASAA") for the purpose of processing all applications for registration of investment adviser firms and investment adviser representatives in the United States. The IARD is the result of a Congressional mandate in the National Securities Markets Improvement Act of 1996 ("NSMIA") to the SEC to establish an electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers. The subject matter of Rule .1712, Change of the Name of an Investment Adviser, has been subsumed into new Rule .1715, which requires that all changes to Forms ADV be filed with the IARD. There is no mechanism in the IARD system by which the automatic registration requirements of Rule .1714 can be implemented. Therefore, the Division will rely instead on the statutory provisions of G.S. 78C-17(a) for the registration mechanism applicable to executive officers and principals of investment adviser firms.*

18 NCAC 06 .1717 – *S.L. 2001, c. 273, s. 2 created a new G.S. 78C-16(b2), authorizing multiple registration of investment*

adviser representatives who act as solicitors for investment adviser firms. That subsection conditioned this multiple registration upon the adoption of a system of disclosure similar to the system required by the SEC, whereby investment advisers who paid "referral fees" to persons who sent them clients would be required to disclose that compensation agreement to each client at the time of referral.

Comment Procedures: *Written and oral comments regarding these amendments may be directed to David S. Massey, Securities Administrator, NC Department of the Secretary of State, PO Box 29622, Raleigh, NC 27626-0622, (919) 733-3924, dmassey@sosnc.com.*

CHAPTER 06 – SECURITIES DIVISION

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

18 NCAC 06 .1417 APPLICATION FOR LIMITED REGISTRATION OF CANADIAN SECURITIES DEALERS AND SALESMEN

(a) An applicant for limited registration as a dealer pursuant to G.S. 78A-36.1 (the "Dealer") shall file the following with the Administrator:

- (1) a representation that the Dealer does not have an office or physical presence in this state;
- (2) a representation that the Dealer is a resident of Canada;
- (3) a representation that the Dealer will engage only in the activities described in G.S. 78A-36.1(j) in this state;
- (4) a completed application for registration as a securities dealer in the form required by the jurisdiction in Canada in which the Dealer has its head office;
- (5) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Dealer names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Dealer;
- (6) a certification by the securities regulatory agency of each jurisdiction in Canada from which the Dealer will be effecting transactions into this state stating that the Dealer is both registered and in good standing as a securities dealer in that jurisdiction;
- (7) evidence that the Dealer is a member of a Canadian self-regulatory organization ("SRO"), the Bureau des services financiers, or a Canadian stock exchange; and
- (8) a filing fee in the amount of two hundred dollars (\$200.00).

(b) An applicant for limited registration as a salesman (the "Salesman") intending to effect securities transactions in this state on behalf of a Canadian dealer registered under this Section shall file the following with the Administrator:

- (1) a completed application for registration as a securities salesman in the form required by the jurisdiction in which the dealer has its head office;

- (2) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Salesman names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Salesman;
- (3) a certification by the securities regulatory agency of the jurisdiction in Canada from which the Salesman will be effecting transactions into this state stating that the Salesman is both registered and in good standing as a securities salesman in that jurisdiction; and
- (4) a filing fee in the amount of fifty-five dollars (\$55.00).

(c) If any information contained in any document filed with the Administrator by any dealer or salesman who has registered pursuant to G.S. 78A-36.1 is or becomes inaccurate or incomplete in any material respect, the dealer or salesman shall file a correcting amendment as soon as practicable, but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

History Note: Authority G.S. 78A-36.1; 78A-49; Temporary Adoption Eff. January 15, 2002.

SECTION .1500 – MISCELLANEOUS PROVISIONS

18 NCAC 06 .1501 RESCISSION OFFERS

(a) All rescission offers under G.S. 78A-56(g) shall be typed or printed and shall be captioned in bold print or type "Rescission Offer." Offers must set forth in bold type the name of the security with respect to which the offer is made and the date of the transaction involved. Offers must be signed by the offeror or its authorized officer.

(b) Every rescission offer to a purchaser under G.S. 78A-56(g)(1) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the purchaser of his potential rights under G.S. 78A-56 if a violation of that section were found and state the effect on those rights of the purchaser's failure to accept the offer within 30 days from its receipt. The offer shall include a form for the purchaser's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms not less than 30 days after its receipt by the purchaser and must provide, by its terms, that acceptance is effective if the purchaser either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offer shall not require that the purchaser return the security with his acceptance; the offer may, however, require that the purchaser deliver any security he still holds and a verified statement of the transactions in which he disposed of any security to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive payment thereunder. The offer may provide that any offeree who delivers a timely written acceptance but fails to delivery any security held by him and the statement of the transactions in which he disposed of any

security within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(1).

(c) Every rescission offer to a seller pursuant to G.S. 78A-56(g)(2) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the seller of his rights under G.S. 78A-56 if a violation of that section is found and state the effect on those rights of the seller's failure to accept the offer within 30 days from the receipt. The offer shall include a form for the seller's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms not less than 30 days after its receipt by the seller and may provide, by its terms, that acceptance is effective if the seller either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offeror is not required to return the security with the offer; the offer may require that the seller deliver the sum necessary to rescind to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive the security. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver the sum necessary to rescind the transaction specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(2).

(d) The person making the rescission offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. The copy filed with the Administrator shall be addressed to: Rescission Offers, North Carolina Securities Division, 300 N. Salisbury Street, Room 100, Raleigh, N.C. 27603-5909.

History Note: Authority G.S. 78A-56(g)(3); Eff. April 1, 1981; Temporary Amendment Eff. January 14, 2002.

SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

18 NCAC 06 .1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION/NOTICE FILING FOR INVESTMENT ADVISER COVERED UNDER FEDERAL LAW

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) in accordance with the form instructions and by filing the form with IARD (the Investment Adviser Registration Depository). The initial application shall also include the following:

- (1) Proof of compliance by the investment adviser with the examination requirements of Rule .1709;
- (2) Such financial statements as set forth in Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date

more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708 as of a date within 45 days of the date of filing;

- (3) Evidence of compliance with the minimum financial requirements of Rule .1704;
- (4) A copy of the surety bond required by Section 78C-17(e), if applicable upon request of the Administrator;
- (5) The fee required by Section 78C-17(b) of the Act; and
- (6) Any other information the administrator may from time to time require which is relevant to the applicant's qualifications to engage in the business of acting as an investment adviser.

(b) The application for annual renewal of registration as an investment adviser shall be filed with IARD and shall include the following:

- (1) A copy of the surety bond required by Rule .1705, if applicable upon request of the Administrator; and
- (2) The fee required by Section 78C-17(b) of the Act.

(c) Updates and amendments to the ADV shall be subject to the following requirements:

- (1) An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's form ADV;
- (2) An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment; and
- (3) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.

(f) The registration of an investment adviser shall expire on December 31 of each year unless timely renewed.

(g) The notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1) shall be filed with IARD on an executed Form ADV. A notice filing of an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(c) and the Form ADV are filed with and accepted by IARD on behalf of the State.

(h) Notice filings for investment advisers covered under federal law shall expire on December 31 each year unless renewed prior to expiration. The renewal of the notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1)

shall be made by completing Form ADV in accordance with the form instructions and by filing the form with IARD. The renewal of the notice filing for an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(b)(1) is filed with and accepted by IARD on behalf of the State.

(i) Until IARD provides for the filing of Part 2 of Form ADV, the Administrator will deem filed Part 2 of Form ADV if an investment adviser covered under federal law provides, within five days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, an investment adviser covered under federal law is not required to submit Part 2 of Form ADV to the Administrator unless requested.

History Note: Authority G.S. 78C-16(b); 78C-16(d); 78C-17(a); 78C-17(a1); 78C-17(b); 78C-17(b1); 78C-17(e); 78C-18(d); 78C-19(a); 78c-20; 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(b); Temporary Rule Eff. January 2, 1989 for a period of 180 days to expire on June 30, 1989; Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 14, 2002.

18 NCAC 06 .1703 APPLICATION/INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(a) The application for initial registration as an investment adviser representative pursuant to Section 78C-17(a) of the Act shall be made by completing Form U-4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U-4 with IARD. The initial application shall include the following:

- (1) Proof of compliance by the investment adviser representative with the examination requirements of Rule .1709; and
- (2) The fee required by Section 78C-17(b) of the Act.

(b) The application for annual renewal of registration as an investment adviser representative shall be filed with IARD. The application for annual renewal or registration shall include the fee required by G.S. 78C-17(b).

(c) . Updates and amendments to the Form U-4 shall be subject to the following requirements:

- (1) The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur;
- (2) An investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4; and
- (3) An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.

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History Note: Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-18(d); 78C-19(a); 78C-20; 78C-30(a); 78C-30(b); 78C-46(b);
Temporary Amendment Eff. October 1, 1997;
Temporary Rule Eff. January 2, 1989 for a period of 180 days to expire on June 30, 1989;
Eff. February 1, 1989;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. January 14, 2002.

18 NCAC 06 .1706 RECORD-KEEPING REQUIREMENTS FOR INVESTMENT ADVISERS

(a) Except as otherwise provided in Paragraph (j) of this Rule, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;
- (6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
 - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) Any receipt, disbursement or delivery of funds or securities, or

- (C) The placing or execution of any order to purchase or sell any security; provided, however,
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof;
- (12) The following records:

- (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.
- (B) For purposes of this Subparagraph (a)(12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:
- (i) any person in a control relationship to the investment adviser,
 - (ii) any affiliated person of such controlling person, and
 - (iii) any affiliated person of such affiliated person.
- "Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.
- (C) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (a)(12) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;
- (13) Records required of investment advisers primarily engaged in other businesses:
- (A) Notwithstanding the provisions of Subparagraph (a)(12) in this Rule, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities which are direct obligations of the United States
- Such record shall state the title and amount of the security involved; the date and nature of the transaction

(i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its three most recent fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:

- (i) its total sales and revenues, and
- (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this Subparagraph (13), the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities

recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(D) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;(14) A

copy of the following:

- (A) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707 of this Section;
- (B) any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and
- (C) a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(15) A memorandum describing any legal or disciplinary event listed in Schedule D of Form ADV or in any Form U-4 relating to any of the investment adviser's investment adviser representatives and presumed to be material, if the event involved the investment adviser or any of its investment adviser representatives or supervised persons and is not disclosed in the written statements described in Part (a)(14)(A) of this Rule. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items;

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- (16) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser;
 - (A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
 - (B) a signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and
 - (C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance with Rule .1718 of the Act. For purposes of this Rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients;
- (17) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(b) If an investment adviser subject to Paragraph (a) of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Paragraph (a) of this Rule shall also include:

- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;
- (3) Copies of confirmations of all transactions effected by or for the account of any such client; and
- (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the locations of each such security.

(c) Every investment adviser subject to Paragraph (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and
 - (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.
- (d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) Duration requirement for maintenance of records:
- (1) All books and records required to be made under the provisions of Paragraphs (a) to (c)(1), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
- (f) An investment adviser subject to Paragraph (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the administrator in writing of the exact address where such books and records will be maintained during such period.
- (g) Preservation and maintenance of records:
- (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Subparagraph (g)(2) of this Rule, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:
 - (A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
 - (B) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the

- (C) administrator by its examiners or other representatives may request; store separately from the original one other copy of the film or computer storage medium for the time required;
- (D) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservations of, and access to, records from loss, alteration, or destruction; and
- (E) with respect to records stored on photographic film, at all times have available for the administrator's examination of its records pursuant to Section 78C-18(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

- (2) Pursuant to Subparagraph (g)(1) of this Rule an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(i) Every registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina. In determining whether or not the provisions of this Rule shall be waived, the administrator may consider, among other things, whether the main office of the investment adviser is in a place outside the State of North Carolina or whether the investment adviser uses all or some of the bookkeeping facilities of some other investment adviser whose main office is outside the State of North Carolina.

(j) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's record keeping requirements, if any.

History Note: Authority G.S. 78C-18(a); 78C-18(b); 78C-18(e); 78C-30(a); Temporary Rule Eff. January 2, 1989 for a Period of 180 days to expire on June 30, 1989; Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 14, 2002.

18 NCAC 06 .1707 INVESTMENT ADVISER BROCHURE RULE

(a) General Requirements. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to Section 78C-16 of the Act, shall offer and deliver to each advisory client and prospective advisory client a firm brochure and one or more supplement(s) as required by this Rule. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV [CFR279.1], and such other information as the Administrator may require.

(b) Offer and Delivery Requirements.

- (1) An investment adviser shall deliver:
 - (A) The current brochure required by this Rule to a client or prospective client, and
 - (B) The current brochure supplement(s) for each investment adviser representative who will provide advisory services to the client. For purposes of this Rule, an investment adviser representative will provide advisory services to a client if the investment adviser representative will:
 - (i) Regularly communicate investment advice to that client; or
 - (ii) Formulate investment advice for assets of that client; or
 - (iii) Make discretionary investment decisions for assets of that client; or
 - (iv) Solicit, offer or negotiate for the sale of or sell investment advisory services.

- (2) The documents required in Subparagraph (b)(1) of this Rule shall be delivered:
 - (A) Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or
 - (B) At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five business days after entering into the contract.

- (3) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by Subparagraph (b)(1) of this Rule. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven days after the investment adviser is notified of the acceptance.

(c) Delivery to Limited Partners. If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this Rule the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this Rule, a limited liability

partnership or limited liability limited partnership is a "limited partnership."

(d) Wrap Fee Program Brochures.

- (1) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by Subparagraph (b)(1) of this Rule to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.
- (2) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.
- (3) A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under Part (b)(1)(B) of this Rule.

(e) Delivery of Updates and Amendments. The investment adviser must amend its brochure and any brochure supplement(s) and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement(s) becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(f) Multiple Brochures. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(g) Other Disclosure Obligations. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Rule.

(h) Conversion Rule. All investment advisers registered or required to be registered under the Act must deliver to each of their clients their current brochure and all required brochure supplements within 30 days from the date of making its initial filing with IARD.

(i) Definitions. For the purposes of this Rule:

- (1) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement,

including all subsequent amendments (i.e., stickers);

- (2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal;
- (3) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program; and
- (4) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

*History Note: Authority G.S. 78C-18(b); 78C-30(a); 78C-30(b);
Temporary Rule Eff. January 2, 1989 for a Period of 180 Days to Expire on June 30, 1989;
Eff. February 1, 1989;
Temporary Amendment Eff. January 14, 2002.*

**18 NCAC 06 .1710 TERMINATION/
WITHDRAWAL/INVESTMENT ADVISER
REGISTRATIONS**

(a) Investment advisers. The application for withdrawal of registration as an investment adviser pursuant to Section 78C-19(e) of the Act shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) and filed upon Form ADV-W with IARD.

(b) Investment adviser representatives. The application for withdrawal of registration as an investment adviser representative pursuant to Section 78C-19(e) of the Act shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.

*History Note: Authority G.S. 78C-16(b); 78C-19(e); 78C-20; 78C-30(a); 78C-30(b);
Temporary Rule Eff. January 2, 1989 for a Period of 180 Days to Expire on June 30, 1989;
Eff. February 1, 1989;
Temporary Amendment Eff. January 14, 2002.*

**18 NCAC 06 .1711 TRANSFER/INVESTMENT
ADVISER REPRESENTATIVE'S REGISTRATION**

(a) In order to effect a transfer of registration of an investment adviser representative from one investment adviser (the "previous investment adviser") to another investment adviser (the "new investment adviser"), the following shall be filed with the IARD:

- (1) Uniform Termination Notice for Securities Industry Registration (Form U-5) to be provided by the previous investment adviser pursuant to the requirements of Rule .1710 of this Section;
- (2) Uniform Application for Securities and Commodities Industry Representative (Form U-4) to be provided by the new investment adviser, accompanied by a fee of forty-five dollars (\$45.00) for issuance of the new registration, pursuant to the requirements of Rule .1703.

(b) Every registration of an investment adviser representative expires when the employment of the investment adviser representative terminates until that investment adviser representative's registration with a new investment adviser has been approved.

History Note: Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-17(b); 78C-20; 78C-30(a); 78C-30(b); Temporary Rule Eff. January 2, 1989 for a Period of 180 Days to Expire on June 30, 1989; Eff. February 1, 1989; Temporary Amendment Eff. January 14, 2002.

18 NCAC 06 .1712 CHANGE OF NAME OF INVESTMENT ADVISER

History Note: Authority G.S. 78C-17(c); 78C-18(d); 78C-30(a)(b); Temporary Rule Eff. January 2, 1989 for a period of 180 days to expire on June 30, 1989; Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Repealed Eff. January 14, 2002.

18 NCAC 06 .1713 INVEST ADVISER MERGER/CONSOLIDATION/ACQUISITION/SUCCESSION

(a) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of a registered investment adviser, the acquiring or successor entity shall file an initial or amended Form ADV, if the acquiring or successor entity intends to engage in business as an investment adviser in this state. Regardless of whether it intends to engage in business as an investment adviser in this state, the acquiring or successor entity shall file the following with the Administrator not later than 30 days after the fundamental change:

- (1) if the corporate existence of the acquired registered investment adviser is extinguished upon the effective date of the acquisition, a Form ADV-W, filed by the acquiring or successor entity in the name of the acquired entity, for the purpose of terminating the registration of the acquired entity;
- (2) a copy of the corporate or transactional document by which the merger, acquisition, or other fundamental change was effected; and

- (3) if the acquisition was effected by means of a transaction in which the corporate structure of the acquired entity was affected, a copy of a certificate of merger or certificate of dissolution or similar certificate, issued by the custodian of corporate records of the state pursuant to whose laws the transaction was effected.

In addition, if the corporate structure of the acquired entity was not extinguished in the course of the acquisition, the acquired entity shall file an amended Form ADV not later than 30 days following the effective date of the acquisition.

(b) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the IARD a Form U-4 for each investment adviser representative to be transferred from the acquired entity to the acquiring or successor entity and a Form U-5 for each investment adviser representative not to be transferred. (c) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor entity will be an investment adviser covered under federal law, the entities involved shall file appropriate notice filings with the IARD. (d) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor entity will be an investment adviser that is registered or required to be registered under the Act, such merger, consolidation, acquisition, succession, or other similar fundamental change shall be governed by the provisions of Paragraphs (a)-(b) of this Rule.

History Note: Authority G.S. 78C-16(b); 78C-17(a)(c); 78C-18(b)(c)(d); 78C-20; 78C-30(a)(b); Eff. February 1, 1989; Temporary Rule Eff. January 2, 1989 for a period of 180 days to expire on June 30, 1989; Amended Eff. September 1, 1995; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 14, 2002.

18 NCAC 06 .1714 REGISTRATION OF PARTNERS/EXECUTIVE OFFICERS/DIRECTORS

History Note: Authority G.S. 78C-16(a)(b); 78C-17(a); 78C-18(b)(d); 78C-19(a); 78C-30(a)(b); Temporary Rule Eff. January 2, 1989 for a period of 180 days to expire on June 30, 1989; Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Repealed Eff. January 14, 2002.

18 NCAC 06 .1715 INVESTMENT ADVISER REGISTRATION DEPOSITORY

(a) Use of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to the Investment Adviser Registration Depository ("IARD")

operated by the National Association of Securities Dealers. The following additional conditions relate to such electronic filings:

- (1) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.
 - (2) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the State.
- (b) Electronic Filing. Notwithstanding Paragraph (a) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.
- (c) Hardship Exemptions. This Rule provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

- (1) Temporary Hardship Exemption.
 - (A) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.
 - (B) To request a temporary hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and
 - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.
 - (C) Effective Date -- Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within

the same calendar year may be disallowed by the Administrator.

- (2) Continuing Hardship Exemption.
 - (A) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this Rule are prohibitively burdensome.
 - (B) To apply for a continuing hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator at least 20 business days before a filing is due; and
 - (ii) If a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application will grant or deny the application within 10 business days after the filing of Form ADV-H.
 - (C) Effective Date -- Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.
- (3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the administrator where the investment adviser's principal place of business is located, which decision will be followed by the administrator in the other state(s) where the investment adviser is registered.

History Note: Authority G.S. 78C-20; Temporary Adoption Eff. January 14, 2002.

18 NCAC 06 .1716 TRANSITION SCHEDULE FOR CONVERSION TO IARD

- (a) Electronic filing of Form ADV.
 - (1) By March 15, 2002, each investment adviser registered or required to be registered under the Act must resubmit its Form ADV

electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under Rule .1715 of this Section.

- (2) If the amendment to Form ADV is made after March 15, 2002, or at an earlier date if an investment adviser has filed its Form ADV [17 CFR 279.1] (or any amendments to Form ADV) electronically with IARD, the registrant must file amendments to Form ADV required by this Section electronically with IARD, unless it has been granted a hardship exemption under Rule .1715 of this Section.

(b) Electronic filing of Form U-4. By June 30, 2002, for each investment adviser representative registered or required to be registered under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under Rule .1715 of this Section.

*History Note: Authority G.S. 78C-20;
Temporary Adoption Eff. January 14, 2002.*

18 NCAC 06 .1717 CASH PAYMENTS FOR CLIENT SOLICITATIONS

(a) It shall be unlawful for any investment adviser required to be registered pursuant to G.S. 78C-16 to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- (1) The investment adviser is registered under the North Carolina Investment Advisers Act;
- (2) The solicitor is not a person:
 - (A) subject to a Securities and Exchange Commission ("the Commission") order issued under Section 203(f) of the Investment Advisers Act of 1940 ("the 1940 Act"), or subject to an order of the Administrator issued under G.S. 78C-19 or G.S. 78A-39; or
 - (B) convicted within the previous 10 years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A)-(D) of the 1940 Act or described in G.S. 78C-19(a)(2)c.; or
 - (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in Paragraphs (1), (5) or (6) of Section 203(e) of the 1940 Act, or who has been found by the North Carolina Securities Division (the "Division") to have engaged in or acted as accessory after the fact to, or has been convicted of engaging in or acting as accessory after the fact to, a violation of any provision of the North Carolina Investment Advisers Act, the North

Carolina Securities Act, or the Commodities Act (Chapters 78A, 78C, and 78D of the North Carolina General Statutes); or

- (D) who is subject to an order, judgment or decree described in Section 203(e)(4) of the 1940 Act or in G.S. 78C-19(a)(2)d;

(3) Such cash fee is paid pursuant to a written agreement to which the adviser is a party;

(4) Such cash fee is paid to a solicitor:

- (A) With respect to solicitation activities for the provision of impersonal advisory services only; or
- (B) Who is:

- (i) a partner, officer, director or employee of such investment adviser, or

- (ii) a partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

(C) Other than a solicitor specified in Part (a)(2)(A) or (B) of this Rule, if all of the following conditions are met:

- (i) The written agreement required by Paragraph (c) of this Rule:

- (I) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefore;

- (II) contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder; and

TEMPORARY RULES

- (III) requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule .1707 of this Section ("Investment Adviser Brochure Rule") and a separate written disclosure document described in Paragraph (b) of this Rule;
- (4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- (5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- (6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

- (ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under Subparagraph (a)(15) of Rule .1706 of this Section; and
 - (iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.
- (c) The investment adviser shall retain a copy of each written agreement required by this Rule as part of the records required to be kept under Subparagraph (a)(10) of Rule .1706 of this Section.
 - (d) Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.
 - (e) For purposes of this Rule:
 - (1) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.
 - (2) "Client" includes any prospective client.
 - (3) "Impersonal advisory services" means investment advisory services provided solely by means of:
 - (A) written materials or oral statements which do not purport to meet the objectives or needs of the specific client;
 - (B) statistical information containing no expressions of opinions as to the investment merits of particular securities; or
 - (C) any combination of the foregoing services.

*History Note: Authority G.S. 78C-16(b)(2);
Temporary Adoption Eff. January 14, 2002.*

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Editor's Note: *This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.*

Rule-making Agency: *NC Department of Transportation – Division of Highways*

Rule Citation: *19A NCAC 02D .0601, .0607*

Effective Date for Temporary Rule: *January 11, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

(b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this Section shall contain the following information:

- (1) The name of the solicitor;
- (2) The name of the investment adviser;
- (3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

Authority for the rulemaking: G.S. 20-119; 136-18(5)

Reason for Proposed Action for Temporary Rule: *The proposed changes to these Rules are necessary as a result of recent legislative action which clarifies the difference in units that qualify for permits under housemoving laws (found in G.S. 20-356) and other oversize vehicle laws (G.S. 20-119). The amended rules will eliminate the current height restrictions for 16' wide mobile/modular homes. Currently, there are no height restrictions that exist for other types of commodities. The amended rules will allow the DOT Central Permit Office to review and approve routes for overheight 16' mobile/modular homes to provide safe and orderly movement on North Carolina highways.*

Public Hearing:

Date: February 18, 2002

Time: 2:00 p.m.

Location: Room 150, Highway Building, 1 South Wilmington Street, Raleigh, NC

Proposed Effective Date for Permanent Rule: August 1, 2002

Reason for Proposed Action: *The proposed changes to these rules are necessary as a result of recent legislative action which clarifies the difference in units that qualify for permits under housemoving laws (found in N.C.G.S. 20-356) and other oversize vehicle laws (G.S. 20-119). The amended rules will eliminate the current height restrictions for 16' wide mobile/modular homes. Currently, there are no height restrictions that exist for other types of commodities. The amended rules will allow the DOT Central Permit Office to review and approve routes for overheight 16' mobile/modular homes to provide safe and orderly movement on North Carolina highways.*

Comment Procedures: *Any interested person may submit written comments on the proposed rule changes by mailing the comments to Emily Lee, N.C. DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by March 4, 2002.*

Fiscal Impact

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

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .0600 – OVERSIZE – OVERWEIGHT PERMITS

Note: Previous temporary amendments which were approved May 17, 2001 by RRC appear in bold print.

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a **law enforcement officer with jurisdiction;**
- (2) if directed by an official traffic control device to follow a route to a weighing device.
- (3) if the specified route on the permit is **detoured by an officially erected highway sign, traffic control devices, or law enforcement officer,** the driver of the permitted vehicle shall contact the **Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.**

(b) **Prior to application for an oversize, overweight, or oversize/overweight permit, the vehicle/vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight.** Application for permits **with the exception of house move permits** shall be made to the **Central Permit Office in writing** on forms approved by the Department of Transportation or **via telephone.** **Written applications are required for over heights in excess of 14'.** Applications for permits shall be submitted in writing to the **Central Permit Office for consideration of approval for moves exceeding:**

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement; or
- (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement. Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures **shall be required for overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.**

(c) The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a

form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina Oversize/Overweight permit privileges.

(d) Officers of the Division of Motor Vehicles may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with Chapter 20 of the General Statutes, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.

(e) The penalties provided in this Rule are in addition to the penalties provided for in Chapter 20 of the North Carolina General Statutes. (f) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.

(g) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

History Note: Authority G.S. 20-119; 136-18(5); Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; Temporary Amendment Eff. October 1, 2000; Temporary Amendment Eff. January 10, 2002.

Note: Previous temporary amendments which were approved April 19, 2001 and May 17, 2001, by RRC appear in bold print.

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. **Exception:** A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in this Rule. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting,

a minimum of 4", which is required to be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6' to 8' above the road surface with a 5" amber flashing beacon mounted on the top of each extender. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall **not** be issued vehicle specific to exceed a width in excess of 15 feet for all movements unless authorized by the Central Permit Office or the State Maintenance and Equipment Engineer after analysis of the proposed load and evaluation of the proposed route of travel. **Exception:** A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual oversize/overweight permit may be issued valid for unlimited movement without an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations transporting general commodities which has a minimum extreme wheelbase of 51 feet and which does not exceed: width of 12 feet; height of 13 feet, 6 inches; length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed: width of 10 feet; height of 13 feet, 6 inches; length of 45 feet with front and rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet 6 inches; and a weight as set forth in G.S. 20-118(b)(3). Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12". These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of

mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.

3 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration

5 axle single vehicle may have a maximum gross weight up to 94,500 lbs. based on an analysis of weight distribution and axle configuration

5 axle vehicle combination may have a maximum gross weight up to 112,000 lbs. based on the extreme axle measurement

6 axle single vehicle may have a maximum gross weight up to 108,000 lbs. based on an analysis of weight distribution and axle configuration

6 axle vehicle combination may have a maximum gross weight up to 120,000 lbs. based on the extreme axle measurement

7 axle single vehicle may have a maximum gross weight up to 122,000 lbs. based on an analysis of weight distribution and axle configuration

7 axle vehicle combination may have a maximum gross weight up to 132,000 lbs. based on the extreme axle measurement

7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle	37,000 pounds
Tandem axle	50,000 pounds

2 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

3 axle single vehicle may have a maximum gross weight up to 80,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration.

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:

(A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;

(B) Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;

(C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;

(D) Is a vehicle combination with at least five axles;

(E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

- (e) Overlength permits shall be limited as follows:

(1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.

(2) Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.

(3) Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.

- (f) An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date

of movement. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(g) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. **Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday.** Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. **If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday.** Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a **permitted** gross weight of **112,000 lbs.** provided the permitted **vehicle** has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of **10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2" by 12" to be displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24" from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8" in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.**

(h) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. **A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour.** The driver of **the permitted vehicle shall** avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

(i) Additional safety measures are as follows:

- (1) A yellow banner measuring a **total length of 7' x 18" high** bearing the legend "Oversize Load" in 10" black letters **1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize -----ft. Load" identifying the nominal width of the unit in**

transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;(2) Red flags measuring **18"** square shall be displayed on all sides at the widest point of load for all loads in excess of **8' 6"** wide but the flags shall be so mounted as to not increase the overall width of the load;

- (3) **All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.**
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(j) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(k) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular **unit exceeding a width of 10'** shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(l) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the **Division of Highways District Engineer** having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(m) **The Department of Transportation** may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;

TEMPORARY RULES

Temporary Amendment Eff. October 1, 2000;
Temporary Amendment Eff. December 31, 2000;
Temporary Amendment Eff. January 10, 2002.

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, February 21, 2002, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, February 15, 2002 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Thomas Hilliard, III
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

Paul Powell - Chairman
Jennie J. Hayman - Vice Chairman
Walter Futch
Jeffrey P. Gray
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

February 21, 2002 April 18, 2002
March 21, 2002 May 16, 2002

**RULES REVIEW COMMISSION
January 17, 2002
MINUTES**

The Rules Review Commission met on Thursday morning, January 17, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Laura Devan, Thomas Hilliard, John Tart, Robert Saunders, David Twiddy and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Tom Miller	Attorney General's Office/NC Real Estate Commission
Pam Millward	Attorney General's Office/NC Real Estate Commission
Donna Moffitt	DENR/DCM
Kathy Vinson	DENR/DCM
Sheryl Kelly	DENR/DCM
Bill Crowell	DENR/DCM
David Hance	DENR/DWQ
Elizabeth Kountis	DENR/DWQ
Steve Underwood	DENR/DWQ
Juanita Gaskill	DENR/DMF
Wayne Mobley	DENR/DEH
Scott Perry	Criminal Justice Standards
Cindy Kornegay	DHHS/DMH/DD/SAS
George Hurst	Department of Justice
Mark Benton	DHHS/DFS
Julia Lohman	Sheriffs' Education & Training Standards
Ted Sauls	Sheriffs' Education & Training Standards
Michelle Duval	Environmental Defense
Iris Payne	Division of Community Assistance
Roberta Ouellette	Attorney General's Office/NC Appraisal Board
Mell Nevils	DENR/DLR
Robin Smith	DENR
Ryke Longest	Attorney General's Office
Sarah Meacham	Attorney General's Office

RULES REVIEW COMMISSION

Lisa Martin	NC Home Builders Association
Linda Raynor	DENR/DEH/PWS
Dedra Alston	DENR
Amy Yonowitz	Department of Justice
Grady McCallie	NC Conservation Network
Kris Horton	Department of Social Services
Denise Stanford	Pharmacy Board
Pricey Harrison	Coastal Resources Commission

APPROVAL OF MINUTES

The meeting was called to order at 10:02 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the December 20, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

07 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/Commission for MH/DD/SAS – The agency requested, and rule opponents agreed with the requests, that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14P .0102: DHHS/Commission for MH/DD/SAS – The agency requested, and rule opponents agreed with the requests, that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14Q .0303: DHHS/Commission for MH/DD/SAS – The agency requested, and rule opponents agreed with the requests, that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14R .0101; .0105: DHHS/Commission for MH/DD/SAS – The agency requested, and rule opponents agreed with the requests, that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/Commission for MH/DD/SAS – The agency requested, and rule opponents agreed with the requests, that no action be taken on these rules at this time. The Rules Review Commission agreed to carry these rules over to next month.

15A NCAC 6E .0103: DENR/Soil & Water Conservation Commission – No action was taken.

21 NCAC 64 .0211: NC Examiners for Speech and Language Pathologists & Audiologists – The Commission approved the rewritten rule submitted by the agency. Proper formatting of the rule is still needed.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

4 NCAC 19L .0403; .0407; .0501; .0502; .1002: Division of Community Assistance - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

4 NCAC 19L .0802: Division of Community Assistance – the commission objected to this rule due to ambiguity in (2), it is not clear what is meant by "unique and unusual circumstance that does not occur frequently in a number of communities in the state." this objection applies to existing language in the rule.

4 NCAC 19L .0901: Division of Community Assistance – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a), it is not clear what is meant by guidelines. There is no authority to require compliance with guidelines not adopted as rules. This objection applies to existing language in the rule.

4 NCAC 19L .0912: Division of Community Assistance – The Commission objected to this rule due to ambiguity. In (b)(6), it is not clear under what circumstances the Division will need to extend the retention period. This objection applies to existing language in the rule.

4 NCAC 19L .2001: Division of Community Assistance – The Commission objected to this rule due to ambiguity. It is not clear what would constitute "serious environmental or health problems".

12 NCAC 10B .0301; .0304; .0305; .0307; .0401; .0406; .0408; .0409; .0505; .0601; .0603; .0606; .0705; .0706; .0707; .0708; .0710; .0711; .0712; .0905; .0907; .0908; .0909; .0915; .0917; .1004; .1005; .1204; .1205; .1307; .1404; .1405; .1604; .1605; .2104: NC Sheriffs' Education & Training Standards – The Commission extended the period of review at the agency's request so that their attorney could be present at the meeting to defend the rules.

15A NCAC 2C .0107: DENR/Environmental Management Commission - This rule was approved conditioned upon receiving technical changes by the end of the day. The technical change was subsequently received.

15A NCAC 4B .0126: DENR/Sedimentation Control Commission - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NCAC 7B: DENR Coastal Resources Commission - The Chairman displaced these rules to the end of the meeting

15A NCAC 7L: DENR – The Chairman displaced these rules to the end of the meeting.

15A NCAC 18A .0436: DENR/Commission for Health Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NCAC 18A .0618: DENR/Commission for Health Services – The Commission objected to this rule due to ambiguity. In (k) the rule refers to records that must be "kept and maintained." However there are no actual explicit documentation (or record making) requirements in this rule. The rule needs to either specify what activity must be documented or delete the record-keeping requirement.

15A NCAC 18D .0303: DENR/Commission for Health Services – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 46 .1814: NC Board of Pharmacy – The Commission objected to this rule due to ambiguity. In (c) it is unclear what supervisory requirements are placed on the pharmacist. It is unclear whether the rule intends to require some pharmacist involvement to ensure that a "person legally qualified to administer drugs" is not able to remove more drugs than "the quantity... needed to satisfy... patient needs." It is unclear if (c) intends to require that a pharmacist somehow limit the ability of a dispensing device to limit the quantity of drugs removed to only "doses needed to satisfy" patient needs, providing actual supervision to insure that only that dosage is removed, or simply complying with (a) and (b). If it does intend to require that additional step or stage of supervision, then (c) goes beyond the requirements and limitations found in (a) and (b). However it is not clear that is the intent of (c). Part of this ambiguity arises from the difference in language in (a)(1) that addresses access by any "authorized personnel" and that in (c) addressing access by persons "legally qualified to administer drugs." The group in (c) is a smaller group of individuals than those in (a). One wonders if the board actually intends the distinctions in the supervision requirements in (a) over access by any "authorized personnel" and that in (c) over those "legally qualified to administer drugs." In summary the rule is not clear over the actual supervisory requirements placed on pharmacists and may be unclear about who the pharmacist is to supervise.

21 NCAC 46 .2502: NC Board of Pharmacy – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was not received. Ms. Stanford wants to take the rule to her board. It will thus be placed on the agenda for next month.

21 NCAC 57A .0201: NC Appraisal Board – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a)(5) the Board states that in place of a straightforward hours of experience standard for each of the licensing categories, it "may utilize" a point system. Presumably this would allocate a given number of points for such and such a type of appraisal. However, there is no point system laid out. So the rule is either vague or it uses a point system that is made and adjusted outside of rulemaking. This is beyond the Board's authority. Also it is unclear, when read in conjunction with 21 NCAC 57B .0101, how many hours in each course applicants are required to have completed under (a)(1) and (a)(2). If reference was made in (a)(1) and (2) to rule 57B .0101 rather than to specific courses in this rule, that should solve the ambiguity. In addition to the above substantive problems, in (c), page 2 at line 11 and 13, the agency needs to make a technical change to make reference to the "previous" registration, licensure, or certification being canceled.

21 NCAC 57A .0203: NC Appraisal Board – The Commission objected to this rule due to lack of statutory authority. There is no authority for the Board to determine the renewal period outside of rulemaking as set out in (b).

21 NCAC 57A .0407: NC Appraisal Board – The Commission objected to this rule due to ambiguity. At the end of (a)(7) the rule states that disciplinary action "includes" an active suspension or revocation. It is not clear if the Board intends to limit the scope of this portion of the rule to prohibit those with only this level of disciplinary action from supervising trainees. If that is so, then it is not clearly stated in this rule. If they actually intend to use this as well as milder forms of discipline as discipline as disqualifiers, then this sentence is unnecessary.

21 NCAC 57A .0409: NC Appraisal Board – The Commission objected to this rule due to ambiguity. It is unclear who must take the action of reporting to the Board any of the violations cited in this rule. Presumably it is the registrant/licensee/certificate holder, but that is not explicit. Could it be anyone with knowledge, such as a business partner or another licensee? If no one reported, it would seem that they could be subject to enforcement action also, as well as the licensee, at least the way this rule is presently written.

21 NCAC 57B .0211: NC Appraisal Board – The Commission objected to this rule due to lack of statutory authority. There is authority for the Board to require any course changes to receive Board approval. However the standards for that approval must be set out in the rules. It does not appear that the standards are set out in this or any other rule.

21 NCAC 57B .0303: NC Appraisal Board – The Commission objected to this rule due to lack of statutory authority and ambiguity. There is no authority for the provision in the second sentence of (b) where the Board approves final course examinations unless the standards for that approval are set out in the rules.

21 NCAC 57B .0306: NC Appraisal Board – The Commission objected to this rule due to ambiguity. In (a)(2) it is unclear what constitutes "a reasonable amount" of income property appraising experience. This is a change from "at least one-third" of the instructor's experience. This suggests that, at least in certain cases, the Board wanted to require more or allow less experience. This might be acceptable if the Board could specify the standards for deciding when the one-third (or any other proportion) is not desirable.

21 NCAC 57B .0602: NC Appraisal Board – The Commission objected to this rule due to lack of statutory authority and ambiguity. The standards for course approval decisions referred to in (a) do not appear to be set out in the rule. Indeed the last sentence of (a) seems to indicate that the standards are not addressed in rulemaking. If they are addressed in rulemaking, that is unclear. If there are no standards specified, the Board is without authority to use standards made outside of formal rulemaking.

Commissioners Devan and Twiddy recused themselves from consideration of or voting on the Real Estate Commission rules.

RULES REVIEW COMMISSION

21 NCAC 58C .0304: NC Real Estate Commission – The Commission objected to this rule due to lack of statutory authority. Paragraph (b), lines 15-17 require a school to use the Real Estate Commission's broker course final examination, unless they obtain permission to utilize another final exam. This amounts to a waiver from the Commission's single approved exam rule. There are no standards set out for this waiver.

21 NCAC 58C .0603: NC Real Estate Commission – The Commission objected to this rule due to lack of statutory authority. In (c), lines 28-31, there is a waiver of the six-month "grace period" or extension to complete the requirements of attending a seminar and submitting a demonstration video. There are two specific guidelines at lines 29-31. However the third guideline, "warranted by exceptional circumstances" is so broad and vague as to be meaningless and is not a specific guideline as required by G.S. 150B-19(6). The meeting adjourned for a short break at 12:20 p.m.

The meeting reconvened at 12:32

Chairman Powell had to leave and Jennie Hayman took over his position as Chairman for the rest of the meeting.

Commissioner Twiddy recused himself from voting on Coastal Resources Commission rules. He is a member of the Home Builders Association and a representative was appearing to oppose the rules.

15A NCAC 7B .0701: DENR/Coastal Resources Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. The first sentence in (a) is not consistent with G.S. 113A-109. The rule requires the preparation and adoption of a CAMA land use plan by each county within the coastal area while the statute lets the county decide whether or not to develop the plan. Paragraph (g) is not consistent with paragraph (e). Paragraph (e) sets requirements on the type of plan that can be adopted by a municipality while paragraph (g) says they can adopt any type plan if funded by non-CAMA funds. Since the Department, not the Commission determines who receives funding, the source of funding does not appear to be a valid consideration for setting standards.

15A NCAC 7B .0801: DENR/Coastal Resources Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority for the Commission to set process requirements beyond the statutory ones as this rule does in (b).

15A NCAC 7B .0802: DENR/Coastal Resources Commission – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NCAC 7B .0901: DENR/Coastal Resources Commission – This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The next meeting will be on Thursday, February 21, 2002.

The meeting adjourned at 1: 20 p.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #184)

December 20, 2001 through January 20, 2002

DHHS/DIVISION OF FACILITY SERVICES

Criteria and Standards for Ambulatory Surgical	10 NCAC 3R .2113	Amend
Information Required of Applicant	10 NCAC 3R .2114	Amend
Need for Services	10 NCAC 3R .2115	Amend
Facility	10 NCAC 3R .2116	Amend
Staffing	10 NCAC 3R .2118	Amend
Relationship to Support and Ancillary Services	10 NCAC 3R .2119	Amend

DHHS/COMMISSION FOR THE BLIND

Non-Discrimination	10 NCAC 19A .0601	Adopt
Confidentiality	10 NCAC 19A .0602	Adopt
Definitions	10 NCAC 19A .0701	Adopt
Petitions	10NCAC 19B .0101	Amend
Notice	10 NCAC 19B .0102	Amend

RULES REVIEW COMMISSION

Hearing Officer	10 NCAC 19B .0103	Amend
Hearings	10 NCAC 19B .0104	Amend
Decision	10 NCAC 19B .0105	Amend
Record of Proceedings	10 NCAC 19B .0106	Amend
Declaratory Rulings	10 NCAC 19B .0108	Amend
Hearing Officers	10 NCAC 19B .0201	Amend
Director or Designated Agent	10 NCAC 19B .0202	Repeal
Commission for the Blind	10 NCAC 19B .0203	Repeal
Purpose and Definitions	10 NCAC 19C .0101	Amend
Responsibility	10 NCAC 19C .0102	Amend
Stand Equipment Merchandise and Supplies	10 NCAC 19C .0105	Amend
Training Program	10 NCAC 19C .0106	Amend
Issuance of Licenses	10 NCAC 19C .0206	Amend
Eligibility for Licensing	10 NCAC 19C .0207	Amend
Suspend Terminate License Removal from Business	10 NCAC 19C .0208	Amend
Filling of Vacancies	10 NCAC 19C .0209	Amend
Contractual Agreement Between Division and Operato	10 NCAC 19C .0210	Amend
Civil Rights	10 NCAC 19C .0211	Amend
Temporary Closing	10 NCAC 19C .0309	Amend
Retirement	10 NCAC 19C .0310	Repeal
Moving Expenses	10 NCAC 19C .0311	Amend
Purpose	10 NCAC 19C .0408	Amend
Policy	10 NCAC 19C .0409	Amend
Procedure	10 NCAC 19C .0410	Amend
Election	10 NCAC 19C .0504	Amend
Nominations and Elections	10 NCAC 19C .0506	Amend
Organization and Operation	10 NCAC 19C .0509	Amend
Functions	10 NCAC 19C .0511	Amend
Subcommittees	10 NCAC 19C .0512	Amend
Committee Initiative	10 NCAC 19C .0514	Amend
Division Responsibility and Relationship with Comm	10 NCAC 19C .0515	Amend
General Responsibilities	10 NCAC 19C .0601	Amend
Hours of Operation	10 NCAC 19C .0602	Amend
Reports	10 NCAC 19C .0604	Amend
Repairs	10 NCAC 19C .0605	Amend
Equipment Merchandise Supplies Cash	10 NCAC 19C .0607	Amend
Insurance	10 NCAC 19C .0608	Amend
Pricing of Merchandise	10 NCAC 19C .0609	Amend
Minimum Fair Return and Definitions	10 NCAC 19C .0701	Amend
Set-Aside	10 NCAC 19C .0702	Amend
Distribution of Proceeds	10 NCAC 19C .0703	Amend
Income from Vending Machines on Federal Property	10 NCAC 19C .0704	Amend
Purpose and Procedure	10 NCAC 19D .0101	Repeal
Project Development	10 NCAC 19D .0102	Repeal
Eligibility Criteria	10 NCAC 19D .0103	Repeal
Proposal	10 NCAC 19D .0201	Repeal
Project Review	10 NCAC 19D .0202	Repeal
Eligibility	10 NCAC 19E .0101	Amend
Moving from North Carolina Temporary Absence	10 NCAC 19E .0105	Amend
Moving Among Counties	10 NCAC 19E .0106	Amend
Report of Eye Examination	10 NCAC 19E .0110	Amend
Applications	10 NCAC 19E .0112	Amend
Payment Standards	10 NCAC 19E .0202	Amend
Domiciliary Care	10 NCAC 19E .0203	Amend
Definition of Resources	10 NCAC 19E .0401	Amend
Dependents	10 NCAC 19E .0403	Repeal
Unearned Income	10 NCAC 19E .0405	Amend
Earned Income	10 NCAC 19E .0409	Amend
Resources for Reserve	10 NCAC 19E .0410	Amend
Real Property	10 NCAC 19E .0411	Amend
Sale or Transfer of Real Property	10 NCAC 19E .0412	Amend

RULES REVIEW COMMISSION

Accrued Payments	10 NCAC 19E .0501	Amend
Payments to Others	10 NCAC 19E .0503	Amend
Checks	10 NCAC 19E .0601	Amend
Exception to Delivery	10 NCAC 19E .0602	Amend
Endorsement of Checks	10 NCAC 19E .0603	Amend
Lost Checks Duplicate Checks	10 NCAC 19E .0604	Amend
Over-Payment	10 NCAC 19E .0605	Repeal
Responsibilities of Agency	10 NCAC 19E .0701	Amend
Rights of Clients	10 NCAC 19E .0702	Repeal
Safeguarding Information	10 NCAC 19E .0704	Amend
Appeal of Division Action	10 NCAC 19E .0801	Amend
Acknowledgment of Request	10 NCAC 19E .0803	Repeal
Informal Conference	10 NCAC 19E .0804	Repeal
Summary of Informal Conference	10 NCAC 19E .0805	Amend
Notification of Distribution	10 NCAC 19E .0902	Amend
Basic Eligibility Criteria	10 NCAC 19F .0104	Amend
Eligibility Based on Vision Loss	10 NCAC 19F .0107	Amend
Goals	10 NCAC 19F .0401	Amend
Services	10 NCAC 19F .0402	Amend
Delivery of Services	10 NCAC 19F .0501	Repeal
In-Home Aide Services Contract	10 NCAC 19F .0504	Repeal
Referral for Orientation and Mobility Training	10 NCAC 19F .0506	Repeal
Contracts for Services	10 NCAC 19F .0507	Repeal
Confidentiality	10 NCAC 19F .0601	Amend
Appeal to Designated Agency Representative	10 NCAC 19F .0602	Amend
Request for Fair Hearing	10 NCAC 19F .0603	Amend
Eligibility for And Authorization of Services	10 NCAC 19G .0101	Amend
Materials	10 NCAC 19G .0102	Amend
Restoration Services	10 NCAC 19G .0103	Amend
Transportation	10 NCAC 19G .0104	Amend
Maintenance	10 NCAC 19G .0105	Amend
Job Placement	10 NCAC 19G .0106	Amend
Establishment of Small Business Operations	10 NCAC 19G .0107	Amend
Reader Services	10 NCAC 19G .0108	Amend
Interpreter Services	10 NCAC 19G .0109	Amend
Services to Family Members	10 NCAC 19G .0110	Amend
Recruitment and Training	10 NCAC 19G .0111	Amend
Services to Groups of Individuals	10 NCAC 19G .0112	Amend
Other Services Medical Care	10 NCAC 19G .0113	Amend
Follow-Up Services	10 NCAC 19G .0114	Repeal
Rates of Payment	10 NCAC 19G .0115	Amend
Purpose	10 NCAC 19G .0201	Amend
Definitions	10 NCAC 19G .0202	Amend
Determination of Facility	10 NCAC 19G .0203	Repeal
Standards of Construction	10 NCAC 19G .0204	Repeal
Expenditure Requirements	10 NCAC 19G .0205	Repeal
Initial Staffing	10 NCAC 19G .0206	Repeal
Construction Proposals	10 NCAC 19G .0207	Repeal
Federal Financial	10 NCAC 19G .0208	Repeal
Private Contributions Proposals	10 NCAC 19G .0209	Repeal
Recovery	10 NCAC 19G .0210	Repeal
Purpose of Standards Facilities	10 NCAC 19G .0401	Repeal
Types of Facilities	10 NCAC 19G .0402	Amend
Maintenance of Standards	10 NCAC 19G .0403	Repeal
Benefits	10 NCAC 19G .0501	Amend
Economic Needs Policies	10 NCAC 19G .0502	Amend
Economic Needs Schedule	10 NCAC 19G .0503	Amend
Rehabilitation Counselors	10 NCAC 19G .0601	Repeal
Referrals	10 NCAC 19G .0602	Amend
Order of Selection for Services	10 NCAC 19G .0603	Amend
Confidentiality of Information	10 NCAC 19G .0604	Amend

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Consultation	10 NCAC 19G .0605	Repeal
Implementation of Order of Selection	10 NCAC 19G .0606	Amend
Determination of order of Selection Priority	10 NCAC 19G .0607	Amend
Priority Categories	10 NCAC 19G .0608	Amend
Procedures	10 NCAC 19G .0609	Amend
Applicability of Rules	10 NCAC 19G .0801	Amend
Written Information for Applicants and Consumers	10 NCAC 19G .0802	Amend
Request for Administrative Review Mediation and	10 NCAC 19G .0803	Amend
Division Actions in Response to Request	10 NCAC 19G .0804	Amend
Scheduling and Notice of Administrative Review and	10 NCAC 19G .0805	Amend
Appointment of Hearing Officer and Mediator	10 NCAC 19G .0806	Amend
Scheduling and Notice of Impartial Due Process	10 NCAC 19G .0807	Amend
Administrative Review and Mediation	10 NCAC 19G .0808	Amend
Response to Administrative Review Decision and Med	10 NCAC 19G .0809	Amend
Administrative Review by Director	10 NCAC 19G .0810	Amend
Procedures governing Hearing	10 NCAC 19G .0811	Amend
Venue	10 NCAC 19G .0812	Amend
Discovery	10 NCAC 19G .0813	Amend
Pre-Hearing Conference	10 NCAC 19G .0814	Amend
Evidence	10 NCAC 19G .0816	Amend
Disqualification of Hearing	10 NCAC 19G .0817	Amend
Ex Parte Communications	10 NCAC 19G .0818	Amend
Conduct of Hearing	10 NCAC 19G .0820	Amend
Failure to Appear	10 NCAC 19G .0821	Amend
Hearing Officer's Decision	10 NCAC 19G .0822	Amend
Secretary's Review and Final Decision	10 NCAC 19G .0823	Amend
Extensions of Time	10 NCAC 19G .0824	Amend
Record	10 NCAC 19G .0825	Amend
Transcripts	10 NCAC 19G .0826	Amend
Civil Rights	10 NCAC 19G .0901	Repeal
Hearing Procedures	10 NCAC 19G .0902	Repeal
Services	10 NCAC 19H .0101	Amend
Eligibility Criteria	10 NCAC 19H .0102	Amend
Application for Services	10 NCAC 19H .0103	Amend
Eligibility for Services	10 NCAC 19H .0104	Amend
Retroactive Eligibility	10 NCAC 19H .0105	Amend
Use of Authorization and Certification	10 NCAC 19H .0201	Amend
Claims	10 NCAC 19H .0202	Amend
Fraud Payment of Claim	10 NCAC 19H .0203	Amend
Freedom of Choice	10 NCAC 19H .0204	Amend
Examination Reports	10 NCAC 19H .0206	Amend
Confidentiality of Records	10 NCAC 19H .0207	Repeal
Emergency Authorization	10 NCAC 19H .0210	Repeal
Manual	10 NCAC 19H .0211	Repeal
Criteria for Conducting Clinic	10 NCAC 19H .0301	Repeal
Clinic Preparation	10 NCAC 19H .0306	Repeal
Optical Provider Contracts	10 NCAC 19H .0307	Repeal
Staffing Requirements	10 NCAC 19H .0308	Repeal
Follow-Up Care Records	10 NCAC 19H .0311	Repeal
Civil Rights	10 NCAC 19H .0401	Repeal
Appeal of Division Actions	10 NCAC 19H .0402	Amend
Request for Contested Case Hearing	10 NCAC 19H .0403	Amend
DEPARTMENT OF INSURANCE/NC DEPARTMENT OF INSURANCE		
Application	11 NCAC 20 .0404	Amend
Verification of Credentials	11 NCAC 20 .0405	Amend
Reverification of Provider Credentials	11 NCAC 20 .0407	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Purpose	15 NCAC 2H .0801	Amend
Scope	15 NCAC 2H .0802	Amend
Definitions	15 NCAC 2H .0803	Amend
Parameters for Which Certification May Be Request	15 NCAC 2H .0804	Amend

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Certification and Renewal of Certification	15 NCAC 2H .0805	Amend
Fees Associated with Certification Program	15 NCAC 2H .0806	Amend
Decertification and Civil Penalties	15 NCAC 2H .0807	Amend
Recertification	15 NCAC 2H .0808	Amend
Administration	15 NCAC 2H .0810	Amend
DENR/COASTAL RESOURCES COMMISSION		
Public Hearing and Local Adoption Requirements	15 NCAC 7L .0510	Adopt
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Toll Operations	19 NCAC 2D .0532	Amend
STATE BOARDS/NC ACUPUNCTURE LICENSING BOARD		
Standards for Continuing Education	21 NCAC 1 .0301	Amend
STATE BOARDS/NC BOARD OF DIETETICS/NUTRITION		
Fees	21 NCAC 17 .0113	Amend
STATE BOARDS/NC BOARD OF ELECTROLYSIS EXAMINERS		
Certification of Schools in Other States or Juris	21 NCAC 19 .0622	Amend
STATE BOARDS/NC RESPIRATORY CARE BOARD		
Purpose	21 NCAC 61 .0101	Adopt
Board Office	21 NCAC 61 .0102	Adopt
Definitions	21 NCAC 61 .0103	Adopt
Application Process	21 NCAC 61 .0201	Adopt
Exemptions	21 NCAC 61 .0202	Adopt
Interviews	21 NCAC 61 .0203	Adopt
Fees	21 NCAC 61 .0204	Adopt
License Number Display of License	21 NCAC 61 .0301	Adopt
License Renewal	21 NCAC 61 .0302	Adopt
License with Provisional Endorsement	21 NCAC 61 .0303	Adopt
License with Temporary Endorsement	21 NCAC 61 .0304	Adopt
Inactive Status	21 NCAC 61 .0305	Adopt
License by Reciprocity	21 NCAC 61 .0306	Adopt
Grounds for License Denial or Discipline	21 NCAC 61 .0307	Adopt
Continuing Duty to Report Certain Crimes and Civil	21 NCAC 61 .0308	Adopt
Continuing Education Requirements	21 NCAC 61 .0401	Adopt
Change of Address or Business Name	21 NCAC 61 .0501	Adopt
Advertising	21 NCAC 61 .0502	Adopt
Petitions for Adoption, Amendment, or Repeal of	21 NCAC 61 .0601	Adopt
Procedure for Adoption of Rules	21 NCAC 61 .0602	Adopt
Temporary Rules	21 NCAC 61 .0603	Adopt
Declaratory Ruling	21 NCAC 61 .0604	Adopt
Applicable Hearing Rules	21 NCAC 61 .0701	Adopt
Right to Hearing	21 NCAC 61 .0702	Adopt
Request for Hearing	21 NCAC 61 .0703	Adopt
Granting or Denying Hearing Request	21 NCAC 61 .0704	Adopt
Notice of Hearing	21 NCAC 61 .0705	Adopt
Contested Cases	21 NCAC 61 .0706	Adopt
Prehearing Procedures	21 NCAC 61 .0707	Adopt
Petition for Intervention	21 NCAC 61 .0708	Adopt
Types of Intervention	21 NCAC 61 .0709	Adopt
Disqualification of Board Members	21 NCAC 61 .0710	Adopt
Subpoenas	21 NCAC 61 .0711	Adopt
Witnesses	21 NCAC 61 .0712	Adopt
Final Decision	21 NCAC 61 .0713	Adopt
Proposals for Decision	21 NCAC 61 .0714	Adopt

AGENDA
RULES REVIEW COMMISSION
February 21, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters

RULES REVIEW COMMISSION

- A. Department of Commerce/Division of Community Assistance – 4 NCAC 19L .0802; .0901; .0912; .2001 Objection on 1/17/02 (Bryan)
- B. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency 1/17/02 (DeLuca)
- C. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency 1/17/02 (DeLuca)
- D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency 1/17/02 (DeLuca)
- E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency 1/17/02 (DeLuca)
- F. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency 1/17/02 (DeLuca)
- G. NC Sheriffs' Education & Training Standards – 12 NCAC 10B 12 NCAC 10B .0301; .0304; .0305; .0307; .0401; .0406; .0408; .0409; .0505; .0601; .0603; .0606; .0705; .0706; .0707; .0708; .0710; .0711; .0712; .0905; .0907; .0908; .0909; .0915; .0917; .1004; .1005; .1204; .1205; .1307; .1404; .1405; .1604; .1605; .2104 Extend Period of Review 1/17/02 (Bryan)
- H. DENR/Soil and Water Conservation Commission – 15A NCAC 6E .0103 Objection on 12/20/01 (Bryan)
- I. DENR/Coastal Resources Commission – 15A NCAC 7B .0701; .0801 Objection on 1/17/02 (Bryan)
- J. DENR/Commission for Health Services – 15A NCAC 18A .0618 Objection on 1/17/02 (DeLuca)
- K. NC Board of Pharmacy – 21 NCAC 46 .1814 Objection and .2502 Request for technical change on 1/17/02 (DeLuca)
- L. NC Appraisal Board – 21 NCAC 57A .0201; .0203; .0407; .0409 Objection on 1/17/02 (DeLuca)
- M. NC Appraisal Board – 21 NCAC 57B .0211; .0303; .0306; .0602 Objection on 1/17/02 (DeLuca)
- N. NC Real Estate Commission – 21 NCAC 58C .0304; .0603 Objection on 1/17/02 (DeLuca)
- IV. Review of rules (Log Report #184)
- V. Commission Business
- VI. Next meeting: Thursday, March 21, 2002

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. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
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	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
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	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
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	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
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	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	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
Daryle M McLaughlin v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1726	Elkins	01/08/02	
James A Altizer v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1884	Morrison	01/08/02	
<i>Child Support Enforcement Section</i>				
Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01	
Asuncion I. Crawford v. Department of Health & Human Services	99 CSE 1398	Mann	11/16/01	
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01	
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01	
Winston Shell v. Department of Health & Human Services	00 CSE 0340	Gray	12/21/01	
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01	

CONTESTED CASE DECISIONS

Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01
Gregory Kent Cranford v. Department of Health & Human Services	00 CSE 0392	Chess	11/30/01
Theellie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01
Wade R Locklear v. Department of Health & Human Services	00 CSE 0872	Lassiter	01/08/02
Robert D Goodman v. Department of Health & Human Services	00 CSE 1083	Conner	11/26/01
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01
Ronnie Chapman v. Department of Health & Human Services	00 CSE 1367	Conner	11/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Sharon Tucker v. Department of Health & Human Services	00 CSE 1530	Morrison	11/27/01
William E Kurn v. Department of Health & Human Services	00 CSE 1544	Morrison	11/16/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Marvin R Thorpe Sr v. Department of Health & Human Services	00 CSE 1570	Morrison	12/04/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Walter Chambers v. Department of Health & Human Services	00 CSE 1610	Conner	01/09/02
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
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
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Toury Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Raymond Stevens v. Department of Health & Human Services	00 CSE 1730	Mann	10/31/01
David John Pehler v. Department of Health & Human Services	00 CSE 1733	Morrison	12/04/01
Mohammad E Ghafarian v. Department of Health & Human Services	00 CSE 1734	Wade	11/16/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Joe Louis Hall Jr. v. Department of Health & Human Services	00 CSE 1737	Morrison	11/16/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
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
Jason Cline v. Department of Health & Human Services	00 CSE 1804	Gray	11/14/01
Larry J Thompson v. Department of Health & Human Services	00 CSE 1824	Morrison	12/18/01
John N. Pullium v. Department of Health & Human Services	00 CSE 1829	Chess	11/21/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
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
Allen K. Galloway v. Department of Health & Human Services	00 CSE 1883	Morrison	12/06/01
Jeffery W Sisk v. Department of Health & Human Services	00 CSE 1884	Lassiter	11/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
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
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Wayne DeRoss v. Department of Health & Human Services	00 CSE 1940	Conner	11/26/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Donte Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
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
Scott S Jacobs v. Department of Health & Human Services	00 CSE 1977	Conner	01/08/02
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
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Dennis Cunningham v. Department of Health & Human Services	00 CSE 2183	Conner	11/26/01
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Toni M Rash v. Department of Health & Human Services	01 CSE 0040	Wade	10/02/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Harlie J Turner v. Department of Health & Human Services	01 CSE 0095	Morrison	09/26/01
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Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
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David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
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Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01
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Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
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David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
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Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
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Dennis Green v. Department of Health & Human Services	01 CSE 0682	Gray	08/02/01
Tony Eugene Johnson v. Department of Health & Human Services	01 CSE 0684	Mann	09/11/01
Lynn S Jowers v. Department of Health & Human Services	01 CSE 0688	Elkins	06/25/01
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George D Moore v. Department of Health & Human Services	01 CSE 0693	Wade	08/03/01
Anthony C Lambert v. Department of Health & Human Services	01 CSE 0696	Morrison	07/11/01
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Arthur Jackson v. Department of Health & Human Services	01 CSE 0872	Chess	07/25/01
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Calvin B Icard v. Department of Health & Human Services	01 CSE 1760	Morrison	12/17/01
Lawrence W Rudisill v. Department of Health & Human Services	01 CSE 1803	Lassiter	01/08/02
Thomas L Pittman v. Department of Health & Human Services	01 CSE 1839	Gray	01/11/02
James L Nelson v. Department of Health & Human Services	01 CSE 1864	Morrison	01/08/02
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2 Combined Cases

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Martha Hamilton v. Department of Health & Human Services	00 DCS 1034	Conner	01/08/02
Flossie S McCoy v. Department of Health & Human Services	00 DCS 2152	Lassiter	12/13/01
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Linda Warren v. Department of Health & Human Services	01 DCS 0803	Conner	08/17/01
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Faye D Brown v. Department of Health & Human Services	01 DCS 0923	Lassiter	07/19/01
Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01
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Stanley Ray Cash v. Department of Health & Human Services	01 DCS 1584	Elkins	12/14/01
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Michael E Crain v. Department of Health & Human Services	01 DCS 2082	Conner	01/08/02

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Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01
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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child	00 DHR 1270	Wade	05/22/01
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Judy Woods Days Care v. DHHS, Div. of Child Development	01 DHR 0084	Wade	10/05/01
Shirley Campbell, Shirley's Development Center v. State of NC Dept. of Human Resources, Div. of Child Development	01 DHR 0125	Chess	11/08/01
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Sarah L Thomas, Sarah's Child Care v. Division of Child Dev.	01 DHR 0818 ¹	Gray	12/28/01
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Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01
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Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
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Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01
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Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01
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Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01
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Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01
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Cleo James v. DHHS, Division of Facility Services	01 DHR 1054	Conner	08/16/01
Nora Michell Trafton v. DHHS, Division of Facility Services	01 DHR 1057	Gray	09/04/01
Rossie Nicole Horne v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01
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Dorothy J. Gilmore v. DHHS, Division of Facility Services	01 DHR 1295	Gray	12/04/01
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Caroline Peck Whitaker v. NC DHHS, Division of Facility Services	01 DHR 1595	Gray	12/28/01
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Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01
April Michelle McGuire v. NC DHHS, Division of Facility Services	01 DHR 1935	Elkins	12/13/01
Angela Roberson v. DHHS, Division of Facility Services	01 DHR 2215	Lassiter	01/07/02

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Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0470	Gray	10/11/01	
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Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01	
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Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01		
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01		
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Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gully Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214	Gray	08/07/01	16:05 NCR	463
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David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01		
Terry Peterson Residential Twenty, LLC v. County of Durham	01 EHR 0558	Conner	12/17/01	16:14 NCR	1624
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Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01		
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Vickie Jacobs Little v. Brunswick County Health Department	01 EHR 1298	Mann	11/30/01		
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01		
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Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01	
Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01	
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Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
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John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01
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James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01
Dorothy L. Stinson v. Gaston-Lincoln Area Mental Health "Pathways"	01 OSP 1400	Chess	12/12/01
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Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01
Larry S Height v. NC Utilities Comm. of the NC Dept. of Commerce	01 OSP 1487	Morrison	12/28/01
Alvin Earl Williams v. NC DHHS, Division of Facility Services	01 OSP 1491	Mann	12/17/01
Larry T. Strickland v. Jennifer Heath and the Dept. of Corrections	01 OSP 1537	Mann	11/30/01
Lillie Joyce Blount v. Caswell Center, Human Resources Employee, Clifton Jones, Supervisor	01 OSP 1898	Lassiter	12/04/01
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George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02
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Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01
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Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01
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Phyllis Green v. The UNC Hospitals at Chapel Hill	01 UNC 1354	Gray	11/26/01
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