

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 16, Issue 20
Pages 2135 - 2232

April 15, 2002

This issue contains documents officially filed through March 22, 2002.

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

I. IN ADDITION

Elections, Board of - ORDER	2135
EMC - NPDES Permit	2136
Commerce-Industrial Commission - Public Notice	2137
Voting Rights Letter	2138

II. RULE-MAKING PROCEEDINGS

Environment and Natural Resources	
Parks and Recreation Authority	2139
Health and Human Services	
Facility Services	2139
State Personnel	
State Personnel Commission	2139 - 2140

III. PROPOSED RULES

Health and Human Services	
Facility Services	2141 - 2142
Justice	
State Bureau of Investigation	2142 - 2144
Labor	
Controlled Substances Exam. Regulation	2145 - 2146
Elevator and Amusement Device Division	2144 - 2145

IV. TEMPORARY RULES

Elections	
Elections, State Board of	2147 - 2177
Environment and Natural Resources	
Forest Resources, Division of	2186 - 2187
Health and Human Services	
Facility Services	2184 - 2186
Health Services, Commission for	2187 - 2204
Medical Care Commission	2177 - 2184
Secretary of State	
Securities Division	2205 - 2213
State Personnel	
State Personnel Commission	2213 - 2214

V. RULES REVIEW COMMISSION

VI. CONTESTED CASE DECISIONS

Index to ALJ Decisions	2225 - 2232
------------------------------	-------------

VII. CUMULATIVE INDEX

North Carolina Register is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Respiratory Care Board	61
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

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	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
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.

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.

BEFORE THE STATE BOARD OF ELECTIONS

NORTH CAROLINA
WAKE COUNTY

IN THE MATTER OF
THE 2002 PRIMARY
ELECTION

ORDER

THIS CAUSE coming before the State Board of Elections at its meeting on March 12, 2002, at its offices in Raleigh, North Carolina.

After discussion and an opportunity for public comment, the State Board, upon motion by Mr. Winfree, seconded by Ms. Sims, and amended at the suggestion of Chairman Leake, with the consent of Mr. Winfree, unanimously voted to delay all primaries, elections, and referenda set for May 7, 2002, and to meet immediately after a ruling is issued by the North Carolina Supreme Court on the constitutionality of the legislative redistricting plans adopted by the General Assembly in 2001.

THEREFORE, it is ordered, adjudged and decreed that primaries, elections, and referenda set for May 7, 2002 are hereby delayed pending action of the North Carolina Supreme Court, in the case of Stephenson v. Bartlett, No. 94 P02. The State Board of Elections will meet as soon as possible after the Court rules to decide what action is appropriate at that time.

This the 12th day of March, 2002.

Larry Leake, Chairman

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

**PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS**

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Wastewater for the following types of discharges:

NPDES General Permit No. NCG500000 for Discharges of Non-Contact Cooling Water, Cooling Tower and Boiler Blowdown, Condensate, Exempt Stormwater, Cooling Waters Associated With Hydroelectric Operations, and Similar Wastewaters
NPDES General Permit No. NCG520000 for Discharges of Sand Dredging Wastewater and Similar Wastewaters
NPDES General Permit No. NCG530000 for Discharges of Seafood Packing and Rinsing, Fish Farms and Similar Wastewaters
NPDES General Permit No. NCG550000 for Discharges of Domestic Wastewaters from Single Family Residences and Other Discharges with Similar Characteristics

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

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

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

Telephone (919) 733-5083 ext. 520

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than May 15, 2002. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG500000, NCG520000, NCG530000 or NCG550000.

Date: 3/19/02

Bradley Bennett
For Gregory J. Thorpe, Ph. D., Acting Director
Division of Water Quality

**PUBLIC NOTICE OF RULE-MAKING BY THE NORTH CAROLINA INDUSTRIAL COMMISSION
CONCERNING ESTABLISHMENT OF HOSPITAL FEES FOR WORKERS' COMPENSATION CASES**

NOTICE IS HEREBY GIVEN that, pursuant to N.C. Gen. Stat. §§ 97-26(a), 97-26(b)(3), and 97-80(a), the North Carolina Industrial Commission will hold a public hearing on the establishment of Hospital Fees (DRGs) for Workers' Compensation cases for 2002 and following. In establishing Hospital Fees for 2002 and following the Industrial Commission proposes to continue the DRG methodology and DRG band presently in effect. The present band is 77.07% to 100% of the UB92 hospital bill.

The proposed billing method is to become effective on July 15, 2002. The Commission solicits oral and written comments of all interested persons, firms, and organizations wishing to comment concerning any aspect of the proposed billing method.

SUCH PUBLIC HEARING will be held on Tuesday, April 30, 2002, from 9:30 a.m. to 4:00 p.m. at the Industrial Commission Hearing Room, located on the second floor of the Dobbs Building, 430 N. Salisbury Street, Raleigh, NC, during which the Commission will hear the verbal comments of persons scheduled to speak. Those desiring to make an oral presentation, not to exceed 10 minutes in length, should submit a request on or before Wednesday, April 15, 2002. Speakers at the public hearing are encouraged to prepare a written summary of remarks for the use of the Commission.

WRITTEN COMMENTS, REQUESTS FOR A COPY OF THE BILLING METHOD AND REQUESTS FOR ORAL PRESENTATIONS SHOULD BE ADDRESSED TO MR. BRAD DONOVAN AT 4336 MAIL SERVICE CENTER, RALEIGH, NC 27699-4336 or by telephone call to Mr. Donovan at (919) 807-2562. COPIES OF BILLING METHOD MAY ALSO BE OBTAINED ON THE INDUSTRIAL COMMISSION'S WEBSITE:

<http://www.comp.state.nc.us/ncichome.htm>

WRITTEN COMMENTS SHOULD BE FAXED TO (919) 715-0283 OR MAILED TO 4336 MAIL SERVICE CENTER, RALEIGH, NC 27699-4336 NO LATER THAN June 15, 2002.

This the 20th day of March, 2002.

S/
BUCK LATTIMORE
CHAIRMAN

U.S. Department of Justice

Civil Rights Division

JDR:TCH:DC:nj
DJ 166-012-3
2002-1518

Voting Section – NWB.
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

March 15, 2002

Mr. Gary O. Bartlett
Executive Secretary-Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to the March 7, 2002, Order of the Supreme Court of North Carolina in Stephenson v. Bartlett, postponing all primary elections for state legislative offices scheduled for May 7, 2002, and the March 12, 2002, Order of the State Board of Elections, postponing all other elections scheduled for May 7, 2002, including primaries and elections for federal, state and local offices, as well as all referendum elections, for the state of 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 March 13, 2002.

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. In addition, as authorized by Section 5, we reserved 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
Chief, Voting Section

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 03 – FACILITY SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 03R. Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: The agency plans to adopt temporary rules and amend existing rules which will include policies and need determinations for the 2003 State Medical Facilities Plan (SMFP). SMFP rules for previous years may also be appealed under temporary rule-making.

Reason for Proposed Action: The need determinations and policies contained therein are incorporated into administrative rules. Because permanent rules cannot be adopted in time to become effective by January 1, 2003, it will be necessary to adopt temporary rules.

Comment Procedures: Written comments concerning the rule-making action must be submitted to Mark Benton, Chief of Budget & Planning/Rule-making Coordinator, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

Authority for the Rule-making: G.S. 113-44.15

Statement of the Subject Matter: Rules governing the Parks and Recreation Trust Fund grant program for local governments.

Reason for Proposed Action: Session Law 2001-114 changed the Parks and Recreation Trust Fund Law in two ways: 1) eligible applicants now include public authorities and 2) the value of land donations can be used as local matching funds. Also the Budget Policy Act requires state fund to be managed so that revenue remains in the NC Treasury as long as possible. Current PARTF rules state that local governments will receive a check for the entire amount of the grant when the grant begins. Most state grant funds are awarded on a reimbursement basis. Comments are welcome on all PARTF rules.

Comment Procedures: Mail comments to Mr. Bayard Alcorn, Division of Parks and Recreation, 1615 Mail Service Center, Raleigh, NC 27699-1615 or email comments to Bayard.Alcorn@ncmail.net.

TITLE 25 – OFFICE OF STATE PERSONNEL

CHAPTER 01 – OFFICE OF STATE PERSONNEL

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01E .1305. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4

Statement of the Subject Matter: This Rule gives guidelines for employees donating leave under the Voluntary Shared Leave Program.

Reason for Proposed Action: This Rule is proposed to be amended in order to allow the sharing of leave for the same purposes that the vacation and sick leave policies now allow, i.e., an employee can use vacation leave for his/her own personal illness or to take care of a non-family member but sick leave can be used only to take care of a family member.

Comment Procedures: Written comments concerning this rulemaking action must be submitted to Peggy Oliver, Human

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 12 - PARKS AND RECREATION AREA RULES

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 12K .0101-.0110 - Other rules may be proposed in the course of the rule-making process.

RULE-MAKING PROCEEDINGS

Resources Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services intends to amend the rules cited as 10 NCAC 03R .1125-.1126. Notice of Rule-making Proceedings was published in the Register on November 15, 2001 and December 3, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: May 16, 2002

Time: 10:00 a.m.

Location: NC Division of Facility Services, Council Building, Room 113, Dorothea Dix Campus, Raleigh, NC

Reason for Proposed Action: S.L. 2001-234 amended G.S. 131E-175 and G.S. 131E-176 to add Adult Care Homes (with 7 or more beds) to the Certificate of Need (CON) review. The Division is proposing to amend these Rules to comply with this legislative mandate.

Comment Procedures: Written comments will be accepted through May 15, 2002. These comments should be directed to Mark Benton, Chief of Budget & Planning/Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

Fiscal Impact

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

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 may be waived for 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 new nursing facility or adult care home beds 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 new nursing facility or adult care home beds shall document that the proposed site and alternate sites are suitable for development of a nursing-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 42D, whichever is applicable.

Authority G.S. 131E-177(1); 131E-183.

10 NCAC 03R .1126 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility 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 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 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.

Authority G.S. 131E-177(1); 131E-183.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Bureau of Investigation intends to amend the rule cited as 12 NCAC 04E .0104. Notice of Rule-making Proceedings was published in the Register on February 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: May 15, 2002

Time: 9:00 a.m.

Location: 3320 Garner Rd., Raleigh (ID Section Conference Room – Bldg 16A)

Reason for Proposed Action: *On October 28, 1999, the U.S. Department of Justice changed 28 C.F.R. 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/county 911 communication centers full access to the National Crime Information Center, which is a subdivision of the FBI. This Rule 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. With the highlighted 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.*

Comment Procedures: *Written comments may be mailed to SAC Donald K. Roberts, State Bureau of Investigation, 3320 Garner Rd., Raleigh, NC 27626-0500 or may be emailed to Droberts@mail.jus.state.nc.us or faxed to (919) 662-4619. All comments must be received no later than May 15, 2002.*

Fiscal Impact

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

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

PROPOSED RULES

- 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 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

PROPOSED RULES

- (34) 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.~~ 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 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.~~
- ~~(52)(53)~~ "User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules, rules and regulations.

Authority G.S. 114-10; 114-10.1.

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 15 .0201. Notice of Rule-making Proceedings was published in the Register on January 15, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: May 7, 2002

Time: 3:00 p.m.

Location: Commissioner's Conference Room, 2nd Floor, 4 W. Edenton St., Raleigh, NC

Reason for Proposed Action: The NC Department of Labor proposes to amend this Rule in order to modify the new retrofitting of hydraulic elevators provision(s) of the American National Standard Safety Code for Elevator and Escalators, A17.1-2000, that take effect March 23, 2002. The new code mandates retrofitting of hydraulic elevators that predate current regulations – generally pre-1973. The Department proposed to eliminate the mandate, except where evidence of leaking exists and require owners of hydraulic elevators to perform two pressure tests per year. A public hearing will be held on Tuesday, May 7, 2002. Anyone wishing to speak may contact Lynette D. Johnson at (919) 733-7885 or ljohnson@mail.dol.state.nc.us to register to speak.

Comment Procedures: All interested and potentially affected parties are encouraged to make their views known by submission of written comments to A. John Hoomani, Deputy General Counsel, 4 W. Edenton Street, Raleigh, NC 27601. Comments will be accepted through May 15, 2002.

Fiscal Impact

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

CHAPTER 15 – ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0200 – CODES AND STANDARDS

13 NCAC 15 .0201 ELEVATOR SAFETY CODE

(a) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all new installations of:

- (1) Elevators, dumbwaiters, escalators, and moving walks, shall conform to these Rules and the American National Standard Safety Code for Elevators and Escalators, A17.1-1999-2000 which is incorporated by reference subject to the modifications provided in Paragraph (b) of this Rule. This incorporation includes subsequent amendments and editions of the Code.
(2) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all new installations of inclined stairway chairlifts, and inclined and vertical wheelchair lifts shall conform to these Rules and the American National Standard Safety Code for Platform Lifts and Stairway Chairlifts, A18.1-1999 which is incorporated by reference subject to the modifications provided in Paragraph (b) of this Rule. This incorporation includes subsequent amendments and editions of this Code.

(b) The provisions of the American National Standard Safety Code for Elevators and Escalators, A17.1 shall be subject to the following modifications:

- (1) Rule 100.1e(2)—2.1.2.1 – Observations Elevators Not Fully Enclosed. Change the rule to read as follows: For observation elevators which are not fully enclosed, protection at landings shall be provided as follows:
(A) An enclosure shall be provided which shall extend a minimum of ten 10 feet above the floor.
(B) The enclosure shall be constructed of unperforated material.
(C) Enclosures shall be located in the general line of the hoistway. Horizontal clearance shall be the same as stated in Section 108-2.5.

- (2) Rule 111.10 – Access to Hoistways for Emergency Purposes. In the first sentence change the word "may" to "shall."
(3) Rule 204.2d – Side Emergency Exits. Side Emergency exits shall not be permitted in elevator cars.

(2) Rule 3.18.3.4 – Safety Bulkhead. Change the rule to read as follows:

(A) For new installations only, cylinders buried in the ground shall be provided with a safety bulkhead having an orifice of a size that would permit the car to descend at a speed not greater than 0.075 m/s (14 ft/min), nor less than 0.025 m/s (5 ft/min). A space of not less than 25 mm (1 in.) shall be left between the welds of the safety bulkhead and the other cylinder head. Safety bulkheads shall conform to 3.18.3.6.

(B) For existing installations only, cylinders buried in the ground do not have to be provided with a safety bulkhead of the type referred to in subsection (a), above, provided that the following conditions are met:

- (i) The relief valve setting and system pressure test prescribed by 8.11.3.2.1, and the cylinder test prescribed by 8.11.3.2.2, are each performed two (2) times per year; and
(ii) After each of the tests referred to subsection (i), above, have been performed successfully, the test tag prescribed by 8.11.1.6 shall be installed in the machine room.

(C) A safety bulkhead shall not be required where a double cylinder is used and where both inner and outer cylinders conform to 3.18.3.

(c) The rules of this Chapter shall control when any conflict between these rules and the ANSI Code exists.

(d) Copies of the American National Standard Safety Code for Elevators and Escalators are available for public inspection in the office of the Division, and may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is ninety-six dollars (\$96.00) per copy.

Authority G.S. 95-110.5.

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 20 .0101. Notice of Rule-making Proceedings was published in the Register on February 1, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: May 7, 2002

Time: 1:00 p.m.

Location: Commissioner's Conference Room, 2nd Floor, 4 W. Edenton St., Raleigh, NC

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 collect 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 or December 16, 2001. This action will make permanent the temporary rule that became effective January 16, 2002. In addition, this action proposes to expand the definition of sample to include hair.

Comment Procedures: All interested or potentially affected parties are encouraged to make their views known by submission of written comments to Barbara A. Jackson, NC Department of Labor, 4 W. Edenton Street, Raleigh NC 27601. Written comments will be accepted until May 15, 2002.

Fiscal Impact

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

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.
(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.
(4) "Sample" means the examinee's urine or blood urine, blood, hair 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.

Authority G.S. 95-231; 95-232; 95-234.

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 08 – STATE BOARD OF ELECTIONS

Rule-making Agency: *NC State Board of Elections*

Rule Citation: *08 NCAC 02 .0101-.0108, .0110-.0113; 04 .0101-.0109, .0201-.0208, .0301-.0307; 06B .0101-.0105; 07B .0101-.0102; 09 .0101-.0109; 10B .0101-.0108; 12 .0101-.0111*

Effective Date: *April 15, 2002*

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

Authority for the rulemaking: *G.S. 163-22; 163-82.6; 163-82.15; 163-165.3; 163-165.4; 163-165.5; 163-165.7; 163-166.5 through 166.8; 163-166.10; 163-182.1; 163-182.2; 163-182.7; 163-182.9 through 182.11; 163.182.13; 163-257*

Reason for Proposed Action:

08 NCAC 02 .0101-.0108, .0110-.0113 – *G.S. 22.1, which was the authority for 08 NCAC 02 .0101-.0108, was repealed by Section 2 of S.L. 2001-398. The reference to G.S. 163.22 in the repealed statutes is the general duties statute which applies to everything the State Board does. Therefore specific authority for the repealed regulation was repealed allowing G.S. 150B-21.5(b)(1) to apply.*

08 NCAC 04 .0101-.0109, .0201-.0208, .0301-.0307 – *G.S. 163-165.7 provided voting system law. S.L. 2001-460 (S.B. 17) repealed G.S. 163-160 and 163-161, the statutory basis for 08 NCAC 04 .0101-.0208. Therefore, those rules can be repealed without notice under G.S. 150B-21.5(b)(1).*

08 NCAC 06B .0101-.0105 – *The new statute provides new law regarding ballots.*

08 NCAC 07B .0101-.0102 – *The new regulations provide guidelines regarding faxing voter information.*

08 NCAC 09 .0101-.0109 – *G.S. 163-182.7 provided new recount law. S.L. 2001-398 (S.B. 14) repealed G.S. 163-179.1 and 163-192.1 the statutory basis for 08 NCAC 09 .0101-.0105. Therefore those rules can be repealed without notice under G.S. 150B-21.5(b)(1).*

08 NCAC 10B .0101-.0108 – *The statutes set out mandated the adoption of these Rules by the State Board of Elections. These Rules are needed to set out in a clear outline format the various tasks and actions that must be performed in opening, operating, and closing voting locations. The rules needed to be in effect as temporary rules in order to apply to the 2002 primaries.*

08 NCAC 12 .0101-.0111 – *The changes in this Chapter came from two mandates. One is the amended G.S. 163-257 (S.L. 1999-455 s. 20) which required the State Board to adopt these Rules. The other mandate was the passage of P.L. 107-107 by Congress in December 2001 which encourages the states to make voting easier for armed forces stationed overseas. The recent events in the war against terrorism has caused larger number of armed forces to be on overseas duty. This creates the*

need for these Rules to be in effect for the 2002 primaries and elections.

Comment Procedures: *Comments may be submitted in writing to Don Wright, General Counsel, NC State Board of Elections, PO Box 27255, Raleigh, NC 27611 or by email to don.wright@ncmail.net.*

CHAPTER 02 – ELECTION PROTESTS

SECTION .0100 – ELECTION PROTESTS

08 NCAC 02 .0101 COMPLAINTS CONCERNING CONDUCT OF ELECTIONS

~~(a) A complaint concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.~~

~~(b) A complaint must be in writing and must contain the following:~~

- ~~(1) The name, address and telephone number of the person making the complaint, and any other information needed for the board to readily contact the person.~~
- ~~(2) The signature of the person making the complaint, acknowledged and certified by an officer authorized to administer oaths.~~
- ~~(3) A statement whether the person making the complaint is a registered voter of the jurisdiction or a candidate.~~
- ~~(4) The date, place, and kind of election in question.~~
- ~~(5) A statement whether the complaint concerns the manner in which votes were counted or results tabulated at the precinct or whether it concerns some other kind of irregularity.~~
- ~~(6) Specific allegations of violations of the election law or other irregularities or misconduct sufficiently serious to cast doubt on the apparent results of the election.~~
- ~~(7) If known, the name, address and phone number of each person who was involved in such misconduct or was a witness to it.~~

~~The complaint also may include a request for a specific relief to be ordered.~~

~~(c) A complaint that includes allegations of misconduct by a named or readily identifiable election official shall be considered a complaint against that official under Chapter 3. The complaint against the official may be considered by the county board at the same time as the other portions of the complaint, and may be the basis for action by the board against that official if he is given notice and an opportunity to respond in a manner equivalent to that provided in Chapter 3.~~

~~(d) A complaint must be filed at the county board of elections office or delivered to a member of the county board or the county supervisor of elections.~~

~~(e) A complaint must be filed within the following time:~~

~~(1) A complaint concerning the manner in which votes were counted or the results were tabulated at the precinct must be filed before the beginning of the meeting of the county board to canvass the results of the election. However, a complaint of this nature may be filed as late as 6:00 p.m. of the second day after the completion of the canvass and the declaration of the results, if the complaint states good cause for the delay.~~

~~(2) Any other complaint must be filed by 6:00 p.m. of the second day after the county board has completed the canvass and declared the results of the elections.~~

~~(f) The county board of elections may consider a complaint filed after the time stated in Paragraph (e) of this Rule, if the board finds and states good cause for the delay.~~

History Note: Authority G.S. 163-22; 163-22.1; Eff. March 12, 1976; Amended Eff. November 1, 1984; Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0102 PRELIMINARY CONSIDERATION OF COMPLAINT BY COUNTY BOARD

~~(a) As soon as possible after receiving a complaint, the county board shall meet to determine whether the complaint:~~

- ~~(1) Substantially complies with Rule .0001; and~~
- ~~(2) Establishes probable cause to believe that a violation of election law or that irregularity or misconduct has occurred.~~

~~(b) If the board determines under Paragraph (a) of this Rule that the complaint either fails to substantially comply with Rule .0001 or fails to establish probable cause, the board shall dismiss the complaint. The dismissal shall be in writing and filed at the board office. Within 24 hours of dismissing the complaint the board shall mail notice of dismissal to the person who made the complaint, at the address stated in the complaint. The board may attempt to notify the person earlier by telephone or otherwise. At the same time the county board mails notice to the person who filed the complaint it shall mail a copy of that notice and a copy of the complaint to the State Board. The person who filed the complaint may file an amended complaint or may appeal the dismissal to the State Board in the manner provided in Rule .0006 of this Chapter.~~

~~(c) If the board determines under Paragraph (a) of this Rule that the complaint does substantially comply with Rule .0001 and does establish probable cause, the board shall schedule a hearing to consider the complaint.~~

~~(d) Any complaint that was filed before the canvass and that concerns the manner in which votes were counted or the results tabulated in the precinct must be resolved before the completion of the canvass. If necessary to provide adequate time to resolve such matters, the board may recess the meeting held to canvass results, but in no event shall such recesses delay the completion of the canvass for more than three days unless approved by the~~

~~State Board. Resolution of the complaint shall not delay the canvass of the results of elections not affected by the complaint.~~

~~(e) An appeal of the county board's dismissal of a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall not delay the canvass and declaration of results.~~

~~(f) A complaint concerning any matter other than the manner in which votes were counted or results tabulated in the precinct may be considered before the canvass but shall not affect the canvassing and declaration of results.~~

~~(g) The board may consolidate for hearing any complaints that relate to the same election.~~

History Note: Authority G.S. 163-22; 163-22.1; Eff. March 12, 1976; Amended Eff. November 1, 1984; Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0103 SCHEDULING AND NOTICE OF COUNTY BOARD HEARING

~~(a) The county board shall determine the time and location of the hearing. A hearing on a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall be scheduled at the time and place of the canvass. The county board may recess the canvass to provide time to resolve the complaint, as stated in Rule .0002(d).~~

~~(b) The board shall give notice of the hearing to the person who filed the complaint, any candidate likely to be affected, any election official alleged to have acted improperly, and any other person likely to have a significant interest in the resolution of the complaint. Each person given notice of the hearing shall also be given a copy of the complaint or a summary of the allegations made in it.~~

~~(c) Notice shall be given in the following manner:~~

~~(1) If the complaint concerns the manner in which votes were counted or the results tabulated in the precinct, the person who files the complaint shall be told when he files the complaint that it will be heard at the time of the canvass. Others to whom notice is to be given shall be notified by telephone or in person as far in advance of the canvass as time permits.~~

~~(2) If the complaint concerns a matter other than the manner in which votes were counted or the results tabulated in the precinct, the board shall either mail notice at least four days before the scheduled time for the hearing or shall give notice by telephone or in person at least two days before the hearing.~~

~~(d) Failure to comply with the notice requirements stated in this Rule shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to participate.~~

History Note: Authority G.S. 163-22; 163-22.1; Eff. March 12, 1976; Amended Eff. November 1, 1984; Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0104 CONDUCT OF HEARING BY

COUNTY BOARD

~~(a) The board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chairman or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.~~

~~(b) The board may receive evidence at the hearing from any person with information concerning the subject of the complaint. The person who made the complaint shall be permitted to present his allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the complaint that is not adequately represented by other participants.~~

~~(c) The hearing must be recorded by a reporter or by mechanical means, and the full record of the hearing must be preserved by the county board until directed otherwise by the State Board.~~

History Note: Authority G.S. 163-22; 163-22.1; Eff. March 12, 1976; Amended Eff. November 1, 1984; Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0105 DECISION BY COUNTY BOARD

~~(a) The county board may deliberate and make its decision on the complaint immediately following the hearing or it may adjourn to a later time for that purpose. At the conclusion of the hearing the board shall state when it intends to announce its decision and when a written decision will be filed and available for inspection at the board office. The board may choose not to announce its decision before the written decision.~~

~~(b) The board shall make a written decision on each complaint which shall state separately each of the following:~~

~~(1) Findings of Fact. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. Findings of fact are not mere summaries of testimony.~~

~~(2) Conclusions of Law. The conclusions the board may state are:~~

~~(A) The complaint should be dismissed because it does not substantially comply with Rule .0001.~~

~~(B) The complaint should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.~~

~~(C) The complaint should be dismissed because there is not substantial evidence that the violation, irregularity, or misconduct was sufficiently serious to cast doubt on the results of the election.~~

~~(D) There is substantial evidence to believe that a violation of the election~~

~~law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multi-county election.~~

~~(E) There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election.~~

~~(3) An Order. If the board makes conclusion (A), (B) or (C) under Subparagraph (b) (2), the board shall order the complaint dismissed. If the board makes conclusion (b)(2)(D), the board shall order that the complaint and the board's decision be sent to the State Board for action by it. If the board makes conclusion (b)(2)(E), the board may order any of the following as appropriate:~~

~~(A) That the vote total as stated in the precinct return or the result of the canvass be corrected and new results declared.~~

~~(B) That votes be recounted.~~

~~(C) That the complaint and the board's decision be sent to the State Board for action by it.~~

~~(D) Any other action within the authority of the county board.~~

~~(e) If the county board is not certain what law is applicable to the findings of fact, the board may state and send its findings of fact to the State Board for it to determine the applicable law.~~

~~(d) At the time that the written decision is filed at the county board office the board shall mail a copy of the decision to the person who made the complaint and shall mail to the State Board a copy of the written decision and a copy of the complaint.~~

History Note: Authority G.S. 163-22; 163-22.1; Eff. March 12, 1976; Amended Eff. November 1, 1984; Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0106 NOTICE AND PERFECTION OF APPEAL

~~(a) The county board's decision on a complaint may be appealed to the State Board by:~~

~~(1) The person who filed the complaint;~~

~~(2) A candidate or election official adversely affected by the county board's decision; or~~

~~(3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.~~

~~(b) Written notice of the appeal must be given to the county board within 24 hours after the county files the written decision at its office.~~

~~(c) The appeal to the State Board must be in writing and must include the following information:~~

~~(1) The name and address of the person appealing;~~

~~(2) The person's standing to appeal;~~

- ~~(3) The date, place, and kind of election in question;~~
- ~~(4) The date of the county board hearing; and~~
- ~~(5) The reason for appealing the decision, including any arguments concerning the facts or law in support of the appeal.~~

~~(d) The written appeal must be delivered or deposited in the mail, addressed to the State Board, by:~~

- ~~(1) The end of the second day following the day on which the decision was filed by the county board in its office, if the decision concerns a first primary; or~~
- ~~(2) The end of the fifth day following the day on which the decision was filed in the board office, if the decision concerns an election other than a first primary.~~

History Note: Authority G.S. 163-22; 163-22.1;
 Eff. March 12, 1976;
 Amended Eff. November 1, 1984;
 Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0107 CONSIDERATION OF APPEAL BY STATE BOARD

~~(a) In its consideration of an appeal from a decision of a county board on a complaint the State Board may:~~

- ~~(1) Decide the appeal on the basis of the record from the county board;~~
- ~~(2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record;~~
- ~~(3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence;~~
- ~~(4) Hold its own hearing on the complaint and resolve the complaint on the basis of that hearing; or~~
- ~~(5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.~~

~~(b) The State Board shall give notice of its decision as required by G.S. 163-181 and may notify the county board and other interested persons in its discretion.~~

History Note: Authority G.S. 163-22; 163-22.1;
 Eff. March 12, 1976;
 Amended Eff. November 1, 1984;
 Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0108 STATE BOARD AUTHORITY OVER ELECTION PROTESTS

~~In exercise of the authority stated in G.S. 163-22 and 163-22.1 to supervise all elections in the state, the State Board may consider complaints that do not comply with these Regulations, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over complaints pending before county boards, and may take any other action necessary and without taint of fraud or corruption.~~

History Note: Authority G.S. 163-22; 163-22.1;

Eff. March 12, 1976;
Amended Eff. November 1, 1984;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS

~~(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.~~

~~(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. 163-182.12.~~

~~(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. 163-182.10, the board shall set the hearing no later than 10 business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.~~

~~(d) Notice of hearing as required by G.S. 163-182.10(b)(2) shall be given at least three business prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.~~

~~(1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in North Carolina Rules of Civil Procedure.~~

~~(2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of GS. 163-182.10(d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.~~

~~(3) All election protest hearings before county boards shall recorded by a court reporter. The hearing need not be transcribed unless the~~

TEMPORARY RULES

board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal to the county board. A county board may cause hearings to be recorded by mechanical means and not by court reporter only with prior permission of the executive director of the State Board of Elections. Any non-transcribed record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an

appealed hearing. Transcripts of hearings shall be kept for two years after their creation.
(4) If the State Board sets an appeal for hearing, either a member of or the counsel to the county board shall appear at the hearing before the State Board. In addition, the county director of elections shall appear. With prior consent from the State Board, persons other than a county board member and director may appear on behalf of the county board at the appeal.

History Note: Authority G.S. 163-22; 163-182-10; Temporary Adoption Eff. April 15, 2002.

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons filing election protests with a county board of election shall use the following form:

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

1. Full name and mailing address of person filing the protest.

2. Home and business phone number, fax number, and e-mail address.

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

9. What action do you desire the county board of elections to take in this matter?

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

12. How many pages of additional answer are attached to this protest? How many pages of attachments are attached?

Signature of Protestor

Date/Time Filed with County Board _____

TEMPORARY RULES

(to be filled out by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections, PO Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

*History Note: Authority G.S. 163-22; 163-182.9;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board election protest decision must use the following form:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11(a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

5. State the date of the county board hearing.

6. State the legal and factual basis for your appeal.

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

9. What relief do you seek? Why?

10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

11. Besides a copy of the original protest and the county board decisions, this appeal includes ___ pages of additional answers and ___ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing

Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

History Note: Authority G.S.163-22; 163-182.11;
 Temporary Adoption Eff. April 15, 2002.

08 NCAC 02 .0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS

- (a) Eligibility to vote in a new election shall be determined by the voter's eligibility and circumstances at the time of the new election.
- (b) Eligibility to register to vote and to vote in a new election shall be governed by G.S. 163-82.6.
- (c) The date of any new non-municipal election, in which absentee ballots are to be required or allowed, shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election. This is required in order to provide sufficient time for absentee ballots to be prepared, printed and made available and for "one-stop" voting to be provided within the mandates set out in G.S. 163, Article 20.
- (d) The date of any new election ordered in a county covered by the preclearance requirements of Section 5 of the Voting Rights Act of 1965 shall be set no earlier than 75 days from the date of the new election order in order to prepare, submit, and obtain preclearance approval.
- (e) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new election in the primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

History Note: Authority G.S.163-22; 163- 182.13(c);
 Temporary Adoption Eff. April 15, 2002.

CHAPTER 04 – VOTING EQUIPMENT

SECTION .0100 - USE OF MECHANICAL VOTING MACHINES

08 NCAC 04 .0101 TYPE OF VOTING MACHINES ALLOWED

Any voting machine adopted by a county board of elections for use in any county in North Carolina shall be constructed as to fulfill the following requirements:

- (1) It shall secure to the voter secrecy in the act of voting.
- (2) It shall enable each voter to vote a straight party ticket in a general election.
- (3) It shall provide facilities for voting for all candidates of as many legal political parties as may make nominations.
- (4) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties.

- (5) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more.
- (6) It shall prevent the voter from voting for the same persons more than once for the same office.
- (7) It shall permit the voter to vote for or against any question he may have the right to vote on, but no other.
- (8) It shall permit each voter in a general election but not in a primary, to deposit, write in, or affix upon receptacles or devices provided for the purpose, ballots containing the names of persons for whom he desires to vote, whose names do not appear upon the machine.
- (9) It shall be equipped for use in primary elections so that the election officials can lock out all rows except those of the voter's political party by a single adjustment on the machine.
- (10) It shall correctly register or record, and accurately count all votes cast for any and all persons, and for or against any and all questions.
- (11) It shall be provided with a public counter which shall show at all times during an election how many persons have voted.
- (12) It shall contain proper places on the face of the machine in plain view of the voter when voting where the ballot labels shall be put, either in a perpendicular or horizontal position, so the voter will know exactly how he is voting.
- (13) It shall contain a locked, concealed counter which shall be concealed at all times during the time the polls are open but which can be opened after the close of the polls and show the total vote cast for each candidate and for each party and on each question or issue submitted.

The State Board of Elections, as of December 1975, has already approved four types of voting machines for use in this state which comply with requirements outlined in .0101 of this Section; namely, (a) AVM, (b) IES, (c) R. F. Shoup, (d) Video Voter.

History Note: Authority G.S. 163-160; 163-161;
 Eff. March 12, 1976;
 Temporary Repeal Eff. April 15, 2002.

08 NCAC 04 .0102 CUSTODY OF VOTING MACHINES

Voting machines, when not in use, shall be under the custody of the chairman of the county board of elections who shall be directly responsible to the county board of elections for the safekeeping, storage, maintenance and care of the machines. All

~~voting machines shall be properly stored in a safe, dry building, securely locked so they cannot be tampered with when not in use on election day. The chairman of the county board of elections may appoint as many persons as the board approves, for the maintenance, storage and care of the voting machines and for the proper preparation of the machines for a primary or election, as well as for their delivery to the voting precincts preceding a primary or an election. These persons so appointed by the chairman as custodians shall be paid for their services such compensation as the county board of elections may authorize and as approved by the county commissioners. On election day when the machines are being used for voting purposes, and until they are collected by the county board chairman, they shall be in the custody of the precinct registrar.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0103 INSTRUCTING PRECINCT OFFICIALS ON USE OF VOTING MACHINES

~~The chairman of the county board of elections in a county where voting machines are used in more than one voting precinct, shall hold an instruction meeting before any primary or election for the purpose of instructing the precinct registrars and judges on the use of the machines so that they may be qualified to instruct the voters on how to vote on a voting machine. The precinct election officers shall be instructed on the use and operation of the machine according to factory instructions furnished with the machines when they are purchased or rented, and the chairman of the county board of elections shall not permit a voting machine to be used in any precinct in any election unless the chairman shall be satisfied that the registrar and judges of the precinct have learned the proper use and operation of the machines.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0104 BALLOT LABELS FOR USE ON VOTING MACHINES

~~(a) In Primary Elections. All voting machine ballot labels for use in any county using voting machines in a primary shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit to the said county chairman a list of the names of all candidates of all political parties who have filed their notices of candidacy with the State Board of Elections and who are entitled to be voted for in the primary election, and the chairman shall print the names of such candidates on the special voting machine ballot labels, together with the names of all candidates who have filed with the county chairman for legislative, county and township offices, arranged under the proper party name. The names of all of the candidates for each office for each political party shall be printed in alphabetical order under or to the right of the title of the office.~~

~~(b) In General Elections. All voting machine ballot labels for use in any county using voting machines in a general election shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit~~

~~to the said county chairman a list of the names of all party nominees for the various offices for which the State Board of Elections is required by law to canvass the vote and certify the nominees and who are entitled to be voted for in the general election, and the said county chairman shall print their names on the special voting machine ballot labels, together with the names of the nominees for the offices for which the county board of elections is required to canvass the votes and certify the nominees, under the proper party name.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0105 ARRANGEMENT OF POLLING PLACE WHERE VOTING MACHINES USED

~~At all elections where voting machines may be used, the arrangement of the polling place shall be the same as is now provided by law, except no voting booths or ballot boxes shall be used. The exterior of the voting machines and every part of the polling room shall be in plain view of the election officers. The machines shall be so placed that the ballot labels on the face of the machines can be plainly seen by the election officers and the party challengers and observers when not in use by voters. The election officers shall not themselves be, or permit any other person to be, in any position that will permit one to see or ascertain how a voter votes, except when he voter requests assistance. It shall be the duty of the registrar to post on the wall inside of the polling room sample voting machine ballots so that voters may inspect them to see where the different "parties and candidates" and "questions" are located on the machine and thus be able to find them quickly when voting. It is well, where possible to do so, to have a model voting machine, furnished by the manufacturers of the voting machines, set up on the election officers table, where the voters will pass it on their way to the machine, and have one of the judges of election, or an assistant, instruct each voter as he passes by letting the voter operate the model himself. In this way he can become familiar with the manner of operating the voting machine before he enters it, and will not require assistance in operating it.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0106 DELIVERY AND INSPECTION OF VOTING MACHINES

~~It shall be the duty of the chairman of the county board of elections to have each voting machine delivered to the voting places and placed in the custody of the registrar within three days before the election with the ballot labels already in place on each machine. When the machines are delivered to the registrar the said chairman or his agent shall deliver to the registrar the keys for each machine in a "sealed envelope." The registrar and chairman shall then check to be sure the number stamped on the keys correspond to the number of the voting machines. They shall also check to see that the ballot labels are correctly in position and examine the counters to see if they have been turned to 000, and that the machines are in good working order.~~

History Note: Authority G.S. 163-160;

Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

**08 NCAC 04 .0107 DIRECTIONS FOR VOTING
 WHEN MACHINES ARE USED**

~~Just preceding the time for the polls to open, the registrar and judges shall open the voting machines and examine the ballot labels and counters to see if it is set at 000, and shall allow any watchers or any electors to examine the same before the voting begins. If found to be correct and in proper form, the counter shall be locked and sealed and remain that way until the polls close.~~

~~Provided that any new type voting machines which contain an added feature whereby before the casting of the first vote the status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.~~

~~After a voter enters the voting room or enclosure where voting machines are used, he shall follow the same procedure preparatory to voting as if paper ballots were used. The voter shall present himself to the registrar who will check the registration book to ascertain if the voter is properly registered. If found to be registered then the judge keeping the poll book will write his name in the poll book as having voted and the registrar shall also check his name on the registration book as having voted. If it is a primary election and the voter has no party affiliation recorded against his name on the registration book and refuses to declare his party affiliation, or states that he is an independent voter, then the registrar shall inform him that he cannot vote in the primary as the law now so provides. If the voter does have his party affiliation recorded, then the registrar shall inform the election officer in charge of the voting machine the party affiliation of the voter as recorded, and the party ticket which he may lawfully vote that is the same party as is recorded for him on the registration book. The voter shall, if properly registered, then go to the officer in charge of the voting machine and present himself for voting. The voter then shall be asked by the officer in charge if he knows how to operate the voting machine. If he says no, the officer, at the voter's request, may explain to the voter how to vote on the machine. If in a primary, the officer must actuate the primary knob or level for the particular political party with which the voter is enrolled so that he cannot vote for candidates of any other party in the primary. After completing the voting the voter opens the curtains and leaves the voting enclosure.~~

~~A voter using a voting machine is entitled to request the same assistance in the actual voting on the machine as the law now allows him to have in marking a paper ballot.~~

History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

**08 NCAC 04 .0108 COUNTING OF VOTES AND
 PREPARING RETURNS: ABSENTEE VOTES**

~~(a) Immediately upon the close of the polls, the precinct election officers shall lock and seal the voting machine against further voting and open the counter compartment in the presence of persons who may be lawfully present at that time, giving full view of the counters. The presiding registrar, under the scrutiny of a judge of a different political party in a general election, or of any precinct official or any voters present in a primary election, shall then, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter. He shall also, in the same manner, read and announce the vote on each constitutional amendment, proposition, or other question. As each vote is read and announced, it shall be recorded on two statements by the two judges, and when completed shall be compared with the numbers on the counters of the machine. If found to be correct, the results given by the voting machine counter, shall be announced by the presiding registrar. After the reading and announcing of the vote, and before the doors of the counter compartment of the voting machine shall be closed, ample opportunity shall be given to any person or persons lawfully present to compare the results so announced with the counters of the machine and if any corrections are necessary they shall then and there be made by the precinct officials.~~

~~(b) Provided that any new type voting machines which contain an added feature whereby before the casting of the first vote the status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.~~

~~(c) The election officers shall, as soon as the count is completed and fully ascertained, lock the counter compartment and it shall remain locked for a period of 30 days, except it be ordered opened by a court of competent jurisdiction, or by the State Board of Elections or county board of elections.~~

~~(d) All absentee ballots received at the precinct on primary or general election day from the chairman of the county board of elections shall be opened, checked and counted by the precinct officers in the same manner as is now provided by law where paper ballots are used. The absentee ballots shall be counted after the polls close and the votes added to the total vote as recorded by the voting machine counter. The precinct returns shall show the total votes received by each party or candidate including both those recorded on the voting machines and those of absentee voters.~~

~~(e) All of the absentee ballots and envelopes shall be returned by each registrar to the county canvass made by the county board of elections on the second day following the election.~~

History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

**08 NCAC 04 .0109 COLLECTION OF VOTING
 MACHINES AND KEYS AFTER ELECTION**

~~The keys of the voting machines shall be enclosed in an envelope to be supplied by the board on which shall be written the number of each machine and the district and precinct where~~

~~it has been used, which envelope shall be securely sealed and endorsed by the election officers, and shall be returned on canvass day to the board from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the officials having them in charge. Only an authorized person shall have in his possession any key or keys of any voting machine, and all election officers or persons entrusted with such keys for election purposes, or in the preparation of the machine therefore, shall not retain them longer than necessary to use them for such legal purposes. The chairman of the county board of elections shall collect and store all machines as soon after the close of the election as possible, except where they will have to be used in a second primary, and the machines shall at all times be stored in a suitable place within the discretion of the chairman of the county board of elections, including the polling place itself, if suitable.~~

History Note: Authority G.S. 163-160;
 Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

SECTION .0200 - USE OF PUNCH-CARD VOTING EQUIPMENT

08 NCAC 04 .0201 DEFINITIONS

The following definitions apply to this Section:

- ~~(1) "Automatic tabulating equipment" includes apparatus which automatically examines (or scans) and counts votes recorded on ballot cards, and tabulates the results.~~
- ~~(2) "Ballot card" means a tabulating card on which votes may be recorded by punched holes or by marking with pen, pencil or special marking device.~~
- ~~(3) "Ballot labels" means the pages, cards or other material containing the names of offices and candidates and the statements of measures or issues to be voted on, which are placed on the voting device.~~
- ~~(4) "Counting center" means the voting precinct in which votes are recorded by the voter.~~
- ~~(5) "Electronic voting system" means a system in which votes are recorded on ballot cards, and such votes are subsequently counted and tabulated by automatic tabulating or counting equipment.~~
- ~~(6) "Voting device" means an apparatus which the voter uses to record his votes on a tabulating card, which votes are subsequently counted by automatic tabulating equipment.~~

History Note: Authority G.S. 163-160;
 Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 04 .0202 AUTHORITY TO PURCHASE AND LEASE EQUIPMENT

~~(a) The governing body of any county or municipality, upon recommendation by the county board of elections, may acquire~~

~~by purchase or lease or base purchase agreement or abandon any voting system covered by these rules, provided such equipment or system has been approved by the State Board of Elections and a letter of "certification of approval" is recorded in the office of the State Board of Elections. Any county or municipality adopting the use of any system or equipment approved by the State Board of Elections may use such system or equipment in all elections and in all or a part of the precincts within its boundaries, provided however no such equipment shall be used along with paper ballots in the same precinct unless specifically permitted by provision contained in Chapter 163 of the General Statutes of North Carolina.~~

~~(b) The provisions of all state laws relating to elections shall apply to all elections where systems and equipment covered by these rules, are used. The provisions of these rules shall, however, be controlling with respect to elections where vote recorders, tabulating devices, automatic and electronic counting equipment are used.~~

~~(c) Mandatory Precinct Ballot Counter. No county, municipality, county or municipal board of elections shall permit the use of vote recorders, voting devices or electronic counting devices authorized by these rules, unless there is, in place in each precinct where such systems are used, an approved "precinct ballot counter" to be used to count the ballots cast in each such precinct.~~

~~(d) Ballots to Remain in Precinct Until Counted. No ballots, used in conjunction with devices and systems authorized by these rules shall be removed, transported or transferred from the voting precinct in which such votes were cast until such ballots have been counted and the results recorded on the required precinct return forms and properly executed by the registrar and judges.~~

History Note: Authority G.S. 163-160; 163-161;
 Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 04 .0203 VOTE RECORDERS: TABULATING: COUNTING DEVICES

Any electronic voting system, counting device, vote recorder or ballot system approved by these rules shall:

- ~~(1) provide for voting in secrecy, except in the case of voters who have received assistance as provided by law;~~
- ~~(2) permit each voter to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and the automatic tabulating or counting equipment shall reject choices for the office or question recorded on his ballot card if the number of choices exceeds the number for which he is entitled to vote;~~
- ~~(3) permit each voter, by one mark or punch, to vote for the candidates of that party for president and vice president;~~
- ~~(4) permit each voter to vote for candidates in the primary in which he is qualified to vote, and~~

- ~~not to vote for candidates in the primary in which he is not entitled to vote;~~
- ~~(5) prevent the voter from voting for the same person more than once for the same office;~~
- ~~(6) be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and counting ballots;~~
- ~~(7) when properly operated, record correctly and count accurately every vote cast.~~

~~When such device has been approved, any improvement or change which does not impair its accuracy, efficiency, or ability to meet all requirements shall not require a re-examination or re-approval.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0204 BALLOT LABELS: IDENTIFICATIONS

- ~~(a) Arrangement. Ballot labels shall be printed in vertical columns or in a number of separate pages which are placed on the voting device or on the ballot.~~
- ~~(b) Type; Color. Ballot labels shall be printed in plain clear type in black ink, of such size and arrangement as to fit the construction of the voting device or size of the ballot; they shall be printed on clear white material or on material of different colors to identify different ballots or parts of the ballot. Composition and color of ballot labels shall be subject to approval by the Executive Secretary-Director of the State Board of Elections.~~
- ~~(c) Titles of Office; Names of Candidates. The titles of offices and the names of candidates shall in all elections be arranged in vertical columns or in a series of separate pages. The office title shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office, the position for which each candidate is running, and the number to be elected. In all cases every ballot or ballot page shall conform to the requirements specified in G.S. 163-137(c).~~
- ~~(d) Ballot Cards. Ballot cards shall be of the size, design and stock suitable for processing by automatic data processing machines or automatic scanning counting devices that produce a printed type of the total votes cast for each candidate, office or issue. Each ballot card, used in conjunction with a vote recorder, shall have an attached serially numbered perforated stub, which shall be removed by an election official before it is deposited in the ballot box. The name of the county, municipality or special district, the designation and date of the election, and in primary elections, the name of the political party shall be printed on the ballot card.~~
- ~~(e) Sample Ballots. Sample ballots, which shall be facsimile copies of the official ballot or ballot labels, shall be provided as required by law. At least three copies shall be posted in each polling place on election day and shall be on display in the office of the county or municipal board of elections for at least 20 days prior to the date of the primary or election.~~
- ~~(f) Write-in Ballot. In elections in which voters are authorized to vote for persons whose names do not appear on the ballot, a separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card~~

~~after voting, shall be provided to permit voters to write in the title of the office and the name of the person or persons for whom he wishes to vote.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0205 PREPARATION FOR ELECTIONS: PRECINCT ELECTION OFFICERS

~~Ballots and Supplies. Prior to any election at which equipment or devices authorized by these rules are used the county or municipal board of elections shall have the voting and counting devices prepared for the election and shall provide the precinct election officials with voting devices, ballots, ballot boxes, ballot labels, ballot cards, "write-in" ballots and all other records and supplies as required.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0206 PROCEDURE AT THE POLLING PLACE

- ~~(a) Instruction of Voters. Each voter shall be instructed how to operate the voting device or how to mark the ballot before he enters the voting booth.~~
- ~~(b) Spoiled Ballots. Any voter who spoils his ballot card may return it to the registrar or one of the judges and secure another. The word "spoiled" or "void" shall be written across the face of the ballot and it shall be placed in a container designated to house "spoiled" or "void" ballot cards.~~
- ~~(c) Depositing Ballot Card in Ballot Box. After the voter has marked his ballot card he shall return it to the designated election official who shall remove the stub (if a stub is required) and deposit the ballot card in the ballot box. No ballot card from which the stub has been detached shall be accepted by the election official designated to receive the ballot cards and such ballot cards shall be marked "spoiled" and placed with the spoiled ballot cards. Where ballot scanning counting devices are used the voter shall insert his ballot contained in the protective envelope provided and deposit the emptied ballot container envelope with the election official presiding over the ballot "scanner."~~
- ~~(d) Closing the Polls. As soon as the polls have been closed and the last qualified voter has voted, all unused ballot cards shall be counted, placed in a container and sealed for return to the appropriate board of elections. Before beginning the counting of the ballots, the registrar and both judges shall all witness a test on the precinct ballot counter by engaging the "print" button and securing a printed tape showing a "zero" balance for every candidate and issue. The registrar and both judges shall each sign the tape and shall retain it as a permanent record to be made a part of the precinct return form transmitted to the county board of elections. Following the "zero test" run, the registrar and both judges shall act as a counting team and shall proceed to process the ballot cards for counting by the precinct ballot counter.~~
- ~~(e) Procedure During Ballot Count. All proceedings during the "zero test" and the actual processing of the ballot cards shall be under the direct supervision of the registrar and both judges and shall be conducted under the observation of the public, but no~~

~~persons except those authorized for the purpose shall touch any ballot or ballot card or return. If any ballot card is damaged or defective so that it cannot properly be counted by the automatic precinct ballot counter, a true duplicate copy shall be made and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," and shall bear a serial number which shall be recorded on the damaged or defective ballot.~~

~~(f) Official Returns. The official results obtained from the precinct ballot counter after adding the "curbside ballots," if any, shall be entered upon the precinct return forms provided by the county board of elections and shall be signed by the registrar and judges as required by law.~~

~~(g) Disposition of Ballots After Counting. The precinct election officials shall place the ballot cards in the ballot card container, provided by the county board of elections, which shall then be locked or sealed and such seal signed by the registrar and judges and shall then be delivered to the custody of the county board of elections in accordance with the procedure adopted and specified by the county board of elections.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0207 COLLECTION OF VOTING EQUIPMENT AFTER ELECTION

~~The vote recorders, counting devices, ballot card containers, and all other election paraphernalia shall be secured and housed or delivered in accordance with the rules adopted by the county board of elections.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

08 NCAC 04 .0208 MANUFACTURERS REQUIRED TO PRESENT RULES

~~All manufacturers of devices or equipment authorized for use in North Carolina by these rules shall, through their respective representatives or sales agents, provide a copy of these rules to any county or other governmental entity from which solicitation is made.~~

*History Note: Authority G.S. 163-160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002.*

SECTION .0300 – APPROVAL AND OPERATION OF VOTING SYSTEMS

08 NCAC 04 .0301 REQUIREMENTS OF VOTING SYSTEMS

Any voting system used in any election in North Carolina shall be constructed to fulfill the following requirements:

- (1) It shall be designed to reasonably secure secrecy of the voter in the act of voting;
- (2) It shall enable the voter to vote a straight party ticket in a general election;
- (3) It shall require the voter to vote for the candidates for president and vice-president separately from the straight party vote;

- (4) It shall provide capacity for listing of all nominees of all recognized political parties and other lawful candidates;
- (5) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties;
- (6) It shall permit the voter to vote for only as many persons for an office as the voter chooses and is lawfully entitled to vote for;
- (7) It shall prevent the voter from voting for the same persons more than once for the same office;
- (8) It shall permit the voter to vote for or against only the question(s) the voter may have the right to vote;
- (9) It shall permit each voter in a general election but not in a primary, to write in the name of persons for whom he desires to vote, whose names do not appear upon the ballot, except where prohibited by G.S. 163-123 or other statutes;
- (10) It shall be equipped for use in primary elections so that the voter may vote only in the primary election to which the voter is entitled to vote;
- (11) When properly operated, it shall correctly register or record, and accurately count all votes cast for all ballot items;
- (12) It shall contain a visible public counter that shall show at all times during an election the number of persons who have voted;
- (13) It shall clearly indicate to the voter during the act of voting the ballot items the voter has selected;
- (14) Vote totals for each ballot item shall be contained by a method that is locked and concealed at all times during the time the polls are open;
- (15) It shall meet current Federal Voting System Standards or other applicable Federal Standards;
- (16) It shall be suitably designed and durably constructed for the conduct of elections; and
- (17) It shall be equipped to provide retrievable ballots.

*History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 04 .0302 APPROVAL OF VOTING SYSTEMS

(a) Before approving a voting system for use in North Carolina, the State Board of Elections shall do all of the following:

- (1) Obtain a current financial statement from the proposed vendor and manufacturer's contact information (mail address, telephone and fax numbers, email address);
- (2) Cause staff to review and appraise the voting system;

- (3) Witness a demonstration of the voting system by the proposed vendor;
- (4) Obtain a copy of Independent Testing Authority certification as authorized by National Association of State Elections Directors or Federal Agency;
- (5) Ensure that a copy of the system's source code is held in escrow by a third party approved by the State Board of Elections for the purpose of taking custody of all source codes, including all revisions or modifications of source codes. Proprietary information is not subject to North Carolina Public Records laws;
- (6) Any discussion of proprietary information by the State Board of Elections shall take place in Closed Session as authorized by the Open Meetings requirements of North Carolina law;
- (7) Ensure performance of system complies with North Carolina laws and rules related to voting systems;
- (8) Obtain a copy of the manufacturer's instructions and maintenance manual;
- (9) Obtain a list of all jurisdictions currently using the voting system; and
- (10) Obtain such other reasonable information requested by the State Board of Elections;

- (2) The chairman shall print or cause to be printed on the official ballots for use in the county all ballot items. This shall include but not be limited to the name of each candidate who is to be voted for in that county, as contained on the list of candidates received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.

- (3) The names of all of the candidates for each office for each political party shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.

(b) In General Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

- (2) The chairman shall print or cause to be printed on the official ballots for use in the county. This shall include but not be limited to the names of each candidate who is to be voted for in that county, as contained on the list of nominees received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.

- (3) The names of all of the nominees for each office shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.

(c) In Other Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

- (2) The chairman shall print or cause to be printed on the official ballots for use in the county, the questions, issues, or propositions which are to be voted on in that county, as contained on the list of statewide items received from the State Board of Elections, petitions or from the action of local governmental entities.

- (3) Any review of any special election ballot containing questions, issues, or propositions by the State Board of Elections office or a county board of elections shall not be considered a certification or opinion that the items on the ballot are lawfully upon the ballot and lawfully authorized to be vote upon at the time and place so indicated. It shall be the responsibility of the political entities authorizing the placing of the questions, issues, or propositions for a vote to determine the legality of items to be presented. Upon the request of a county board of elections, the State Board of Elections may present any issue as to the legality of any ballot items in a special election to the North Carolina Attorney General for a legal opinion.

(b) Modifications or Enhancement of Voting Systems. A change to any voting system or unit, including software and hardware modification, shall be submitted in writing for the review of the Executive Director of the State Board of Elections. Following the review, the Executive Director shall determine whether the change is a modification of the voting system as certified by the State Board of Elections. If it is determined to be a modification, the voting system as modified shall be submitted to the State Board of Elections for approval. If the Executive Director shall determine the change is an enhancement that does not substantially alter the voting system as certified by the State Board of Elections, the Executive Director may approve the enhancement and shall not require the review of the State Board of Elections.

(c) Disapproval of Voting System. The State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a voting system or vendor marketing a system to comply with any part of the election laws of the State of North Carolina or for any other satisfactory cause, including but not limited to performance of the system in an election setting. Before exercising this power, the State Board of Elections shall notify the voting system vendor and/or county boards of elections affected and give opportunity to be heard at a hearing to be set by the State Board of Elections.

History Note: Authority G.S. 163-22; 163-165.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 04 .0303 OFFICIAL BALLOT(S) TO BE USED ON VOTING SYSTEM

(a) In Primary Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

(d) The State Board shall review for accuracy the ballot content, arrangement and instructions to voters and certify all ballots to be used in each official election. The primary responsibility for

proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending the State Board shall exert every effort to certify ballot information in as timely a manner as possible.

History Note: Authority G.S. 163-22; 163-165.6; Temporary Adoption Eff. April 15, 2002.

08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, it shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

History Note: Authority G.S. 163-22; 163-165.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF VOTING SYSTEMS

(a) The chairman of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The chairman may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The chairman of the county board of elections shall not permit a voting system to be used in any precinct in any election unless the chairman shall be satisfied that the precinct officials of the precinct have learned the proper use and operation of the system. Such additional instruction as determined by the county board of elections to be needed shall be provided.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

History Note: Authority G.S. 163-22; 163-165.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The chairman of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be properly stored in a safe, appropriate and secure location so that the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the proper preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the county board chairman collects the system, the voting system shall be under the direct supervision and control of the chief judge unless otherwise authorized.

History Note: Authority G.S. 163-23; 163-165.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

The county board of elections shall test or cause to be tested each voting system or unit that will be used in the election to ensure that the system is operating properly and has been programmed to count votes accurately. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include at a minimum the dates, times and method of testing used and the persons conducting the test. Any interested person may observe the testing of the voting system but shall not interfere or impede the process. For the purpose of testing a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

History Note: Authority G.S. 163-22; 163-165.7; Temporary Adoption Eff. April 15, 2002.

CHAPTER 06 – PARTISAN ELECTIONS AND BALLOTS

SUBCHAPTER 06B – BALLOTS

08 NCAC 06B .0101 GENERAL BALLOT GUIDELINES

(a) All ballots cast in elections, primaries, and referenda shall be printed and distributed at the public expense of the jurisdiction for which the election is conducted.

(b) Ballots shall be arranged in the order certified to the county board of elections by the State Board of Elections.

(c) Ballots shall be printed in plain clear type, of such size and arrangement as to fit the construction of the voting system or size of the ballot.

(d) The ballot shall be printed with contrasting type and background so that it can be easily viewed by the voter; material of different colors to identify different ballots may be used. In

primary elections, ballots of different colors may be used to distinguish a political party's ballot if practicable. Composition and color of ballots shall be subject to approval by the Executive Director of the State Board of Elections.

(e) The State Board of Elections shall review for accuracy the ballot content, arrangement and instructions to voters and approve all ballots to be used in each official election. The primary responsibility for proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board of Elections as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending the State Board of Elections shall exert every effort to certify ballot information in as timely a manner as possible.

History Note: Authority G.S.163-22; 163-165.3; 163-165.4; Temporary Adoption Eff. April 15, 2002.

08 NCAC 06B .0102 USE OF PAPER BALLOTS WHERE VOTING SYSTEMS ARE USED

The county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting systems for use by:

- (1) Persons who have been challenged and the challenge has been overruled or sustained;
- (2) Persons who vote using the curbside voting provisions;
- (3) Persons who vote a provisional ballot; and
- (4) A board of elections in extraordinary circumstances if written approval is issued by the State Board of Elections.

History Note: Authority G.S. 163-22; 163-165.3; 163-165.4; Temporary Adoption Eff. April 15, 2002.

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) As soon as practicable after the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) Generally the order of precedence for candidate ballot items shall be as follows:

- (1) Federal Offices;
- (2) State Offices in the order certified by the State Board of Elections;
- (3) District and local offices;
- (4) Non-partisan offices; and
- (5) Referenda, unless the voting system design requires it to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates that are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name exactly as it is to appear on the

ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

History Note: Authority G.S. 163-22; 163-165.6; Temporary Adoption Eff. April 15, 2002.

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible board of elections may determine that it is feasible and advisable to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

History Note: Authority G.S. 163-22; 163-165.3; Temporary Adoption Eff. April 15, 2002.

08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be counted. Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S. 163-182.1 and 163-182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by legislative local act and approved by the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite documentation is signed, certified as required, and delivered to the chief judge or judge chosen to deliver them to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity.

(c) In the cases where the precinct officials must interpret the voter's choice, the following shall apply:

- (1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;
- (2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;
- (3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and
- (4) If a voter has done anything to a ballot other than mark it properly, it shall be counted

unless such action by the voter makes it impossible to determine the voter's choice.

(d) When the counting is completed the chief judge or designee shall announce the results at the precinct. The announcement of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

History Note: Authority G.S. 163-22; 163-182.1; 163-182.2; Temporary Adoption Eff. April 15, 2002.

CHAPTER 07 – FAXING AND ELECTRONIC TRANSFER OF VOTER INFORMATION

SUBCHAPTER 07B – SUBMITTING AND ACCEPTING VOTER INFORMATION BY FAX

08 NCAC 07B .0101 SUBMITTING VOTER REGISTRATION AND CHANGES OF PARTY AFFILIATION

(a) An applicant may submit any form outlined in GS. 163-82.3 by fax to the county board of elections fax number. There are no other numbers to which faxed voter registration applications may be sent. Note that faxed voter registration applications must be received by the county board of elections by 5:00 p.m. on the 25th day before the election. Applicants are encouraged to retain the fax transmission sheet in case the timeliness of their faxed application is called into question.

(b) The applicant, after transmitting an original application for voter registration or a change of party affiliation by fax, must mail or have placed in delivery the original and signed voter registration application to the county board of elections office in the county in which the applicant is applying no later than 20 days before the election.

(c) Changes of name and/or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name and/or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents do not have to be delivered to the board of elections.

History Note: Authority G.S. 163-22; 163-82.6; 163-82.15; Temporary Adoption Eff. April 15, 2002

08 NCAC 07B .0102 ACCEPTING VOTER REGISTRATION APPLICATIONS

(a) County boards of elections must ensure that fax machines are in good working order. County boards shall also ensure that their fax numbers are made widely available throughout the county and to the State Board of Elections.

(b) The State Board of Elections shall maintain all current fax numbers for county boards of elections on its Website at www.sboe.state.nc.us and shall provide telephone assistance to those seeking the proper fax number.

(c) The county board of elections shall, as much as possible, ensure the quality and security of its fax machine. A log of any problems or times in which the fax machine was not operational shall be maintained.

(d) The county board shall develop a plan for checking the fax machine for voter registration documents and shall ensure their delivery to a secure location to await processing.

(e) The following shall apply to new registrations and changes of information submitted by fax:

(1) New registrations and changes of party affiliation submitted by fax must be completed on a form outlined in G.S. 163-82.3 and must be followed by the original application with the original signature of the voter; and

(2) Changes of name and/or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name and/or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents do not have to be delivered to the board of elections prior to processing for changes of address.

(f) When a faxed voter registration document is received by a county board of elections office, staff must determine whether or not the document is a new registration within the county or a change of information within the county. New registrations and changes of party affiliation should be separated from changes of name and/or address received by fax.

(g) Faxed original applications and changes of party affiliation should be held in queue until the original application is received by mail or other delivery. Upon receipt of the original application, the application may be processed as timely if transmitted by the 20-day deadline.

(h) Faxed changes of name and/or address may be processed immediately.

(i) New applications and changes of information submitted by fax shall be maintained in the same manner as all other registration/change of information documents.

History Note: Authority G.S. 163-22; 163-82.6; 163-82.15; Temporary Adoption Eff. April 15, 2002.

CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

08 NCAC 09 .0101 RECOUNTS TO FOLLOW CUSTOMARY PROCEDURES

~~Except as provided to the contrary in this Chapter, a recount of votes and publication of results shall be undertaken in the same~~

~~manner and under the same circumstances as provided by law for the original counting of votes.~~

History Note: Authority G.S. 163-179.1; 163-192.1;
ARRC Objection May 19, 1988;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 09 .0102 LOCATIONS OF RECOUNTS

~~Upon receiving a demand for recount of votes, if the demanding candidate is entitled by law to a recount or if a county board of elections determines that a recount is otherwise in order, the board shall set a date, time, and place for such recount. The board shall determine that all votes cast shall be counted at a central location, that they shall be counted in the precincts in which they were cast, or that they shall be counted at a combination of these and other locations where vote tabulation normally occurs.~~

History Note: Authority G.S. 163-179.1; 163-192.1;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 09 .0103 NOTICE OF RECOUNT

~~Upon deciding the date, time, and place of a recount of votes, a county board of elections shall give notice to any candidates whose votes will be recounted and to any other candidate or other person determined by the board to be sufficiently interested in the outcome of such recount. The county board shall give such notice in any form that is reasonably calculated to reach such persons and shall advise such persons of the date, time and place of recount and of their right or the right of their designees to be present to witness the recount of votes.~~

History Note: Authority G.S. 163-179.1; 163-192.1;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 09 .0104 OFFICIALS CONDUCTING RECOUNT

~~In recounting votes, a county board of elections may employ the services of as many elections officials and ballot counters as it deems necessary. In no event, however, shall votes be recounted in the precincts in which they were cast unless the registrar and both judges of said precinct are present for the entire period during which votes are recounted and the results are recorded.~~

History Note: Authority G.S. 163-179.1; 163-192.1;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;

ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 09 .0105 CHALLENGE OF RECOUNT PROCEDURES

~~In the event that any candidate for an office for which votes have been recounted challenges the results of such recount or the manner in which votes were recounted, the candidate shall, within 24 hours, file his protest with the county board of elections. Protests of recounts shall be in the same form as provided for other protests and shall be heard by the county board in the same manner as provided for other protests.~~

History Note: Authority G.S. 163-179.1; 163-192.1;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
ARRC Objection May 19, 1988;
Expired Eff. August 1, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002.

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case of G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the following shall apply:

- (1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;
- (2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;
- (3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and
- (4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) The following shall apply in counting punch card ballots:

- (1) If the voter has shown consistency in marking his choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is

- completely punched out or hanging by one corner (showing that three of the four corners have been punched out); and
- (2) If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted. A preference shall be constituted by the equal application of the stylus against the ballot for the preferred candidates.

(e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate shall be conducted by a bi-partisan team of four: two officials (one from each party) reading and confirming the totals per machine and two officials (one from each party) recording the results simultaneously.

(f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally."

(g) The county board of elections conducts recounts in two circumstances. In the first circumstance, the recount is mandatory under G.S. 163-182.7(b). In the second circumstance, the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS

(a) How to conduct the first recount. In the first recount, all ballots that were originally to be counted by the optical scan equipment are to be counted again by the optical scan equipment. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - are to be counted by hand and eye. The results provided shall be carefully re-read using the team of four guidelines outlined in 08 NCAC 09 .0106(c).

(b) The steps after the first recount. When the first recount has been completed, the board of elections shall follow these steps:

- (1) The county board must determine whether the first recount produces a change in the winner;
- (2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (4) of this Rule must be considered;

(4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;

(5) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary;

(6) If the machine totals from the initial balloting and the first recount are not the same, Subparagraph (7) of this Rule must be considered;

(7) The county board must determine whether the discrepancy in the machine total can be reconciled;

(8) The county board shall determine if the discrepancy in the machine total between the initial balloting and the first recount can be explained. The county board shall examine the outstack/center bin ballots from the first recount, determine how they should be counted, and reconcile the count with the machine count on the initial balloting. If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and

(9) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye, of all ballots.

(c) A manual recount, by hand and eye, of all ballots is mandatory whenever machine error occurs. If human error is the cause of the discrepancy - and can be graphically explained - the State Board of Elections shall hear such appeals, and make a judicial determination on the facts.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 09 .0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES

(a) How to conduct the first recount. In the first recount, all votes cast on each unit shall be retabulated and results provided. The results provided shall be carefully re-read using the team of four guidelines outlined in 08 NCAC 09 .0106(c).

(b) The steps after the first recount. When the first recount has been completed, the board of elections shall follow these steps:

(1) The county board must determine whether the first recount produces a change in the winner;

(2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first

- recount, Subparagraph (4) of this Rule must be considered;
- (4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;
- (5) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary;
- (6) If the unit totals from the initial balloting and the first recount are not the same, Subparagraph (7) of this Rule must be considered;
- (7) The county board must determine whether the discrepancy in the machine total can be reconciled;
- (8) The county board shall determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction; and
- (9) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount provided by the county board of elections in cooperation with the voting equipment vendor(s).

(c) A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct record electronic voting machine error occurs. The State Board of Elections shall hear any appeals, and make a judicial determination on the facts.

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts by hand and eye of optical scan/marksense/punchcard voting equipment shall be conducted as follows: If a sufficient sample of the precincts of the voting units in question were recounted by hand and eye and produced identical results with that of the mandatory recount in those precincts that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference in the totals between the original count and the mandatory recount, then:

- (1) The mandatory recount by hand initially shall occur in only 10 percent of the voting jurisdiction's precincts.
- (2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.

- (3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the outstacked/center bin, on the original count, and on the mandatory recount.
- (4) The precincts included in the sample which had the same machine-read count on the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.
- (5) If the hand recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand.

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002.

CHAPTER 10 – ELECTION DAY MATTERS

SUBCHAPTER 10B – VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

08 NCAC 10B .0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES

(a) This Rule a Summary. - The provisions of this Section provide a nonexclusive summary of the tasks and duties given to officials under G.S. 163. The legal duty is contained, not in this Rule, but in G.S. 163. For purposes of this Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants, emergency election-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume to act on behalf of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are not legally authorized in any non-partisan election involving either candidates or issues.

(b) Tasks of Precinct Chief Judge- Precinct Chief Judges, in accordance with election statutes, within the Rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct judge may be designated to perform such task or duty.

- (1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.
- (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to

- inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (3) Inform the county board of elections if any relative, by blood or marriage, is a precinct official serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, by blood or marriage, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.
 - (4) Prior to day of the primary or election, receive and review from the county board the precinct observer list and promptly make any objection for good cause to the county board as provided in G.S. 163-45.
 - (5) Receive, prior to the election or primary, sample ballots from the county board of elections, and to post a sample ballot at the voting place prior to opening on the primary or election day as set out in G.S. 163-165.2.
 - (6) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.
 - (7) Receive, prior to the day of the primary or election, from the county board of elections any security keys or codes as to any voting systems or units that are to be operated at the precinct.
 - (8) Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath of office as set out in G.S. 163-41.
 - (9) Prior to the opening of the polls, to ensure there is open means of phone/radio communication between the voting place and the county board of elections office or director.
 - (10) If at the time of opening the voting place, a judge has not appeared, to appoint another person to act as precinct judge, until the chairman of the county board of elections appoints a replacement as set out in G.S. 163-41, or ratifies the selection of the chief judge.
 - (11) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163-166 and any Rules promulgated under that statute.
 - (12) Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-166.8(b).
 - (13) Ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2.
 - (14) Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S. 163-166.10 and any rules promulgated under that statute.
 - (15) Handle challenges made on election or primary day in accordance with G.S. 163-87, and to conduct the hearing upon said challenge in accordance with G.S. 163-88.
 - (16) Be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting, reporting, and transmitting official ballots.
 - (17) Be responsible for the maintenance of and appearance of efficient, impartial, and honest election administration at the precinct as required by G.S. 163-166.5 (3).
 - (18) Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the same.
 - (19) Ensure peace and good order at the voting place as required by G.S. 163-48.
 - (20) Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and privacy as required in G.S. 163-166.7(c) and any rules promulgated under that statute.
 - (21) If needed, to check or assist in checking the registration of voters at the voting place.
 - (22) If ballot counters are needed, receive the list of counters from the county board, or appoint counters if authorized to do so by the county board. Swear in any ballot counters prior to their county votes. Report to the county board of elections the names and addresses of any ballot counters to the county board at the county canvass as set out in G.S. 163-163-43.
 - (23) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
 - (24) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
- (c) Tasks of Precinct Judge- Precinct Judges, in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not statutorily made exclusive to the chief precinct judge.
- (1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.
 - (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
 - (3) Inform the county board of elections if any relative, by blood or marriage, is a precinct official serving with you in the same precinct, and not to serve with that relative in the same

precinct. Also inform the county board of elections of any relationship, by blood or marriage, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

- (4) If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a person to act as chief judge until the chairman of the county board appoints a new chief judge as per G.S. 163-41.
- (5) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.
- (6) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163-166 and any rules promulgated under that statute.
- (7) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
- (8) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
- (9) To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.

(d) Tasks of Election Assistants - Election Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election: Aid the chief judge and other precinct judges in the performances of their tasks and duties as needed or directed.

- (1) Check the registration of voters at the voting place as per G.S. 163-166.7(a).
- (2) Guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b).
- (3) Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41.
- (4) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.
- (5) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (6) Inform the county board of elections if any relative, by blood or marriage, is a precinct official serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of

elections of any relationship, by blood or marriage, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(e) Tasks of Emergency Election –Day Assistant-Emergency Election-Day Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:

- (1) To be prepared prior to and on the day of a primary or election to serve, on short notice given by the county board of elections, to travel to and work at any voting place within the county.
- (2) Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.
- (3) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.
- (4) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (5) Inform the county board of elections if any relative, by blood or marriage, is a precinct official serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, by blood or marriage, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State Board of Elections and under supervision of the county board of elections, shall perform all the following. There is no requirement to have ballot counters appointed or used by a county board of elections unless they are needed.

- (1) After appointment, to appear at the poll immediately at close of the polls and to be prepared to count ballots under the direction and control of the chief and other precinct judges.
- (2) To be sworn into office, by the precinct chief judge prior to starting counting.
- (3) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (4) Inform the county board of elections if any relative, by blood or marriage, is a precinct official serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of

elections of any relationship, by blood or marriage, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(g) General duties of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

- (1) Count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
- (2) Make an unofficial report of returns to the county board of elections, G.S. 163-182.2;
- (3) Certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-182.2;
- (4) Return official ballots and equipment to the county board of elections, G.S. 163-182.2;
- (5) Ensure that the voting system remains secure throughout the period voting is being conducted;
- (6) Ensure that only properly voted official ballots are introduced into the voting system;
- (7) Ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there;
- (8) Ensure that all improperly voted official ballots are returned to the precinct officials and marked as spoiled;
- (9) Ensure that voters leave the voting place promptly after voting;
- (10) Ensure that voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote;
- (11) Ensure that information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections;
- (12) Ensure that registration records are kept secure;
- (13) Ensure that party observers are given access as provided by G.S. 163-45 to current information about which voters have voted;
- (14) Aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;
- (15) Provide Spanish ballot instructions as needed to voters, when such instructions are required to be available by law. Direct all language needs which can not be handled at the precinct to the county board office;
- (16) Register and help, at the voting place, those persons eligible to register and vote on election day as allowed by G.S. 163-254 and G.S. 163-82.6(d);
- (17) Promptly report to the county board of elections, any physical or mental ailment, impairment, or deterioration that may adversely affect the performance of an election

related task or duty. Report any such conditions known in any other precinct officials to the county board;

- (18) Promptly report any violation of election laws or regulations to the chief judge, or to the county board of elections if the chief precinct judge is involved in the violation;
- (19) Provide any person who requests it any information on how to contact the county director of elections, the county board of elections, or the office of the State Board of Elections; and
- (20) Work and stay at the voting place, at all times during the voting day, until closure. By prior agreement with the county board of elections and pursuant to G.S. 163-42, election assistants and emergency election-day assistants may work less than the entire voting day.

History Note: Authority G.S. 163-22; 163-166.6; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0102 SETTING UP POLLING PLACE PRIOR TO VOTING

- (a) The Chief Judge, Judges, and Assistants shall arrive at the voting place no later than 6:00 a.m. on the day of the election.
- (b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.
- (c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges and assistants of each represented party. The tasks and duties assigned shall adhere to the rules promulgated by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting and facilitating the process for voters with special needs.
- (d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device is working.
- (e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting place and placed in the custody of the Chief Judge or designated official within three days before the election with the ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are in good working order. Voting units should be locked and sealed (or otherwise secured in the manner recommended by the manufacturer) and should remain that way until the polls are closed.
- (f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the delivery of all election supplies, records and equipment necessary for the conduct of the election.

(g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible parking, and the curbside voting area.

(h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes unobserved. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations. The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.

(i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into the voting place/enclosure should be the same door used to exit the voting place/enclosure. However, if by doing so the flow of voters is disturbed, a separate door may be used to exit the voting place/enclosure. If a separate door is used, it should be in plain view of the Chief Judge, Judges, and Assistants so that no unauthorized persons may enter the voting enclosure through the exit door.

(j) The Chief Judge shall assign a Judge or Assistant to provide demonstrations to voters, upon request, in the proper use of the voting system.

(k) At the Chief Judge's request at 6:30 a.m. (according to the official timepiece used by the Chief Judge), one of the Judges shall announce that the polls are open and shall state the hour at which they will be closed.

History Note: Authority G.S. 163-22; 163-165.5; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0103 VOTING PROCEDURES

(a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by law to accommodate curbside voters. Other provisions for secure removal of election supplies and materials at any time would be permissible under the emergency management plan of a county board of elections in the cases of natural or man-made emergencies.

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases, the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to

vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant shall state whether the person seeking to vote is duly registered. The precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to vote.

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter participation in party primaries is subject to authorization by the respective state party executive committees. Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

(d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either:

- (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or
- (2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; or
- (3) was removed from the list, but the person maintains continuous eligibility within the county; or
- (4) disputes the voting districts (and ballots) to which the person has been assigned.

(e) If the person is found to not be registered to vote in the precinct and the responsible judge of election learns from the person that the person resides in a different precinct, the responsible judge shall provide the person with adequate information in order to direct the person to the proper voting place. If, for any reason, the person refuses to go to the proper precinct to vote, the person shall be permitted to vote a challenged ballot and follow challenge procedures as set out in G.S. 163, Article 8.

(f) It is the duty of the chief judge and judges to gather any voter information regarding changes of name and address in order to assist the county board of elections in updating voter records. If the county board of elections has specifically identified certain voters' records in an attempt to gather additional information, the responsible judge shall ask the voter to update the information. However, registered voters with known and documented valid residence addresses within the county do not have to perform any activity as a prerequisite to voting.

(g) It is the duty of the chief judge and judges to give any voter any technical information the voter desires in regard to ballot items. In response to questions asked by the voter, the chief judge and judges shall communicate to the voter only technical information necessary to enable the voter to mark the ballot.

(h) The Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook or other voting record and to keep the registration list. The names of all persons voting shall be checked on the registration record and entered on the pollbook or other voting record. In an election where observers may be appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter.

(i) The chief judge, judges, and assistants must ensure that registration records are kept secure and do not leave the voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties using authorization to vote documents as opposed to traditional pollbooks may comply with the requirement by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct.

History Note: Authority G.S. 163-22; 163-166.7; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE BALLOTS

(a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by performing whatever action is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any undue delay, the voter shall mark the ballots. The voter shall return the unvoted ballot(s) to the precinct officials.

(b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has returned the spoiled or damaged ballot. The voter shall not be permitted to receive more than three replacement ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.

(c) When the voter has marked the ballots the voter shall ensure the ballot(s) are cast. If the voter has been challenged and the

challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the ballots so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are persons lawfully providing assistance.

(e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be permitted to enter the voting enclosure again for the purpose of voting.

(f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot into the ballot box; the Chief Judge and Judges of election may find, by unanimous vote, that the votes marked by the voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications). The fact that a ballot is only partially and not fully marked shall have no bearing on the decision of the Chief Judge and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the circumstances and make the information known to the county board of elections.

History Note: Authority G.S. 163-22; 163-166.7; Temporary Adoption Eff. April 1, 2002.

08 NCAC 10B .0105 PROCEDURES AT THE CLOSE OF VOTING

(a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct, the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the polls.

(c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made, starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose name is on that list shall be permitted to vote. No person entering the voting enclosure after the close of polls has been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.

(d) The Chief Judge and Judges must subscribe their names to each pollbook.

(e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the chief judge and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall purposely erase any name or mark written on a ballot by a voter.

(g) The Chief Judge, along with a Judge of another political party, shall "close the polls" on each voting unit. The results sheet from each unit shall be placed in an "Official Precinct Returns Envelope." As soon as the polls are closed the chief judge and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate, nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief Judge.

(h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers who are present and also by telephone or other electronic means to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow.

(i) The Chief Judge and Judges shall sign the consolidation and accounting sheets and statement of returns and shall place them in the "returns" envelope or container.

(j) The Chief Judge shall place or cause to be placed by an authorized person under the Chief Judges direction and control: voter registration documents and information, provisional ballot envelope, payroll information, county board communication devices, unit keys and security devices and the official returns envelope. The container should be sealed with non-transparent tape of sufficient size to contain signatures. It shall be signed by the Chief Judge and two Judges.

(k) Consolidation sheets, including the statement of returns for all voted official ballots, should be completed by adding curbside votes to the totals. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. An accounting form shall be completed that accounts for every used and unused ballot - providing the number of blank ballots

received by the board of elections, the number of regular voted ballots, provisional voted ballots, and spoiled ballots.

(l) Voted provisional ballots must be placed in a sealed envelope or container and the seal must be signed by the Chief Judge and Judges.

(m) The Chief Judge shall bring (or have delivered by secure means) the results cartridge (or reading) from each unit to the board of elections office.

(n) All supplies must be collected for return to the board of elections office. Any items brought into the polling place facility should be removed upon vacating the polling place. Precinct Judges shall ensure that the facility is left in the same condition in which it was secured for voting purposes.

(o) Under no circumstance shall voting items be left in the polling place facility out of the custody of the Chief Judge or other designee.

History Note: Authority G.S. 163-22; 163-166.10; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0106 ELECTION SUPPLIES RETURN

(a) After an election or primary, all election supplies shall be immediately taken to the county board of elections office. Election materials and supplies, used or unused, may not remain in the custody of the Chief Judge, Judges, or any other person in unsecured locations overnight.

(b) If it is not possible for a county board of elections to have all precincts return materials and supplies on the night of the election, the county board of elections must submit a security plan to the Executive Director of the State Board of Elections 30 days prior to the election. The Executive Director will provide either approval or required modifications to the plan in writing no later than 15 days prior to the election. A county board must have an alternative security plan approved in order to use it. The board of elections shall have an emergency backup plan that will enable board of elections employees or other authorized persons to retrieve the items from the custody of the Chief Judge and Judges and transport them to the board of elections office.

(c) All materials shall be transported with a "chain of custody" form that includes the signatures and times in which the supplies are in the custody of each official. All supplies, once received at the board of elections, will be verified and signed by a board of elections representative.

History Note: Authority G.S. 163-22; 163-166.10; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELECTIONS

(a) Who Is Entitled to Assistance: In any primary or election, including one-stop absentee voting, a registered voter qualified to vote in the primary or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the voting booth, and in preparing their ballots in accordance with the following:

(1) Any assistance rendered must be performed in person, and shall not be allowed by electronic, paper, or mechanical means of communication with a person outside the voting booth, except in circumstances of disabled voters with special needs. The use of electronic, paper, or

mechanical devices by the voter, while alone in the voting booth and not in contact with another person outside the voting booth, shall not be considered voting assistance;

(2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163-166.8(a)(1), of his choice. Under no circumstances shall any other relative, friend, guardian, person holding a power of attorney, or any other person be allowed to render assistance except as allowed under the circumstances set out in G.S. 163-166.8(a)(2) and in Paragraph (b) of this Rule; and

(3) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(b) Any voter in any of the following four categories shall be entitled to assistance from any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:

(1) One who, on account of physical disability, is unable to enter the voting booth without assistance;

(2) One who, on account of physical disability, is unable to mark his or her ballot without assistance;

(3) One who, on account of illiteracy, is unable to mark his or her ballot without assistance;

(4) One who, on account of visual impairment, is unable to enter the voting booth or mark the ballot without assistance;

No precinct official may refuse the voter's choice of the person to assist him, unless the person so named is legally excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refuses to assist the voter. If the voter's choice of the assisting person, cannot be met on the ground(s) set out herein, the voter shall be allowed to make an additional choice until a willing assisting person is available to assist the voter. There shall be no limitation on the number of voters a person can assist, as long as the assisting person is properly chosen by each voter to assist.

(c) Procedure for Obtaining Assistance: A person seeking assistance in any election shall, upon arriving at the voting place, first request the chief judge to permit him to have assistance, communicating the reasons. If the chief judge determines that the voter is entitled to assistance, the chief judge shall ask the voter to identify the person the voter desires to provide assistance. If that person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along with that person, shall present themselves to the chief judge. The chief judge shall thereupon request the person indicated to render the requested aid. In the case of assistance requested at a one-stop voting site, the assistance may be requested from and received from any election official available at such site.

(d) Any chief judge, judge, or assistant shall provide assistance to a voter if so requested, except for good cause, unless the election official is prohibited from doing so by his status as the voter's employer, official of the voter's union, or agent of the voter's employer or union. Under no circumstances shall any

precinct official or person be assigned to assist a voter who was not specified by the voter.

(e) Conduct of Persons Rendering Assistance. - Anyone rendering assistance to a voter shall be admitted to the voting booth with the person being assisted and shall be governed by G.S. 163-166.8(c). The assisting person shall not do the following:

(1) Give, present, or display within the vision of the voter, any list of preferred candidates, a marked sample ballot, or any other type of document, item, or display that conveys a choice of candidate(s). An assisting person may respond to an inquiry of a hearing impaired voter in writing if needed, as long as a ballot choice is not communicated to the voter;

(2) Speak or play within the hearing or vision of the voter, any conversation, communication, or recording that conveys a choice of candidate(s);

(3) Operate a phone, radio, computer, or any other means of communication while in the voting booth with the voter.

(4) Communicate to others how the voter voted, unless ordered by a court, or make a memorandum of anything that occurred in the voting booth; or

(5) Violate any election law set out in G.S. 163, or violate any election rule set out in Title 8 of the NC Administrative Code.

(f) It shall be presumed that the operation of any means of communication capable of being received by a voter in the voting booth shall constitute an attempt to receive unlawful voting assistance, except in cases of a disabled voter with special needs. Upon having reasonable grounds to suspect such communication or operation by the voter, a precinct official may make inquiry and investigate the alleged operation of the communication equipment. The voter shall be informed of this presumption of unlawful assistance, and the prohibitions contained within G.S. 163-166.8 as to voter assistance. Regardless, any voter suspected of such conduct shall be allowed to vote and cast his or her ballot.

History Note: Authority G.S. 163-22; 163-166.8; Temporary Adoption Eff. April 15, 2002.

08 NCAC 10B .0108 CURBSIDE VOTING

In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions.

(1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct chief judge which shall be in the following form:

Affidavit of Person Voting Outside Voting Place or Enclosure

State of North Carolina

County of _____

I do solemnly swear (or affirm) that I am a registered voter in _____ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure. I understand that a false statement as to my condition will be in violation of North Carolina law.

Date _____

Signature of Voter _____

Address _____

Signature of precinct election official who administered oath; _____

this subdivision shall be canvassed as if it were a separate precinct.

(2) The chief judge or a judge may designate one of the assistants to attend the voter, or assist the voter himself or herself. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by a precinct election official. The ballot(s) shall then be delivered to the voter who shall mark the ballot(s) and hand them to the assisting precinct election official. The ballot(s) shall then be delivered to one of the judges of elections who shall deposit the ballot(s) in the proper boxes. The affidavit shall be delivered to a different judge of election;

(3) The voter and any assisting person shall be entitled to the same assistance and subject to the same restrictions in marking the ballot as is authorized by G.S. 163-166.8 and 08 NCAC 10B .0107; and

(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the county board of elections, those ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163-227.2, except that rather than the count commencing when the polls close under G.S. 163-234(5) as provided for one-stop ballots, the count shall commence when the board has received from each precinct either that precinct's ballots or notification that no such ballots were cast. The total for ballots counted by the county board of elections under

History Note: Authority G.S. 163-22; Temporary Adoption Eff. April 15, 2002.

CHAPTER 12 – RULES FOR MILITARY AND OVERSEAS CITIZENS ABSENTEE VOTING PROCEDURES

08 NCAC 12 .0101 DEFINITIONS

In this Chapter:

- (1) "director" means the county director of elections;
- (2) "board" means the county board of elections;
- (3) "facsimile (fax) transmission" means transmission by a telefacsimile machine (FAX) or any other form of facsimile (fax) transmission device which transports an authentic copy of a document from one user of the device to the other;
- (4) "electronic mail (email)" means transmission via the World Wide Web using a software application such as Microsoft Outlook, Outlook Express, Pegasus, and others to enable transmission from one email address to another email address;
- (5) "transmission statement" means the printout from the sender's fax machine or device that indicates the status of the transmission by fax. The transmission statement will either confirm that the fax was received or indicate that it was not received; and
- (6) Any reference to deadlines should be assumed to represent Eastern Standard Time.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0102 ELECTRONIC MAIL (E-MAIL)

The following requests may be accepted via e-mail:

- (1) Requests for absentee ballot applications;
- (2) Requests for voter registration forms;
- (3) Voter registration mailing address changes; and
- (4) Ballot mailing address changes.

*History Note: Authority G.S. 163-22; 163-257;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 12 .0103 APPLICATIONS/REQUESTS

(a) Voters under G.S. 163, Article 21 may use the Federal Post Card Application (FPCA) to register to vote and to apply for an absentee ballot. The applicant may send the application by air mail or have it placed in delivery or send it by fax to the State Board of Elections secure fax line and may request that the ballot be sent by air mail, placed in delivery or transmitted by fax.

(b) Upon receipt of an application for an absentee ballot under G.S. 163, Article 21, it shall be determined at the county level whether or not the applicant is qualified to vote, a list should be made of those applications approved and disapproved (which list shall be open to inspection by election officials and the public) and an absentee ballot shall be forwarded to each person whose application is approved.

(c) When the county board receives an application request by fax or other delivery from a voter under G.S. 163, Article 21 and that voter requests to have the ballot sent to him/her by fax, the county board shall verify the voter's eligibility to vote. If the voter is eligible to vote, the county board shall send the ballot to the voter as soon as practicable by fax using the telephone number supplied by the voter for that purpose or the number specified by the Department of Defense's Federal Voting Assistance Program. If the voter is not eligible to vote in the State or county, notice of non-eligibility shall be provided to the voter by fax as soon as practicable after the receipt of the request. All transmission statements shall be retained with the corresponding voters' records.

*History Note: Authority G.S. 163-22; 163-257;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 12 .0104 INSTRUCTIONS AND NOTICE; DELIVERY

(a) Each county board shall send by airmail or have placed in delivery, for each absentee voter under G.S. 163, Article 21, appropriate printed instructions for its completion and return, together with a container-return envelope.

(b) Each county board shall send to each absentee voter under G.S. 163, Article 21 who requests that a ballot be sent to him/her by fax all appropriate printed instructions for its completion and return. The printed instructions sent to each such voter shall include the same information provided for other absentee voters with the following:

(c) An absentee ballot that is completed and returned by the voter by facsimile transmission must:

- (1) Contain the following statement: "I understand that by using facsimile transmission to return my marked ballot, I am voluntarily waiving a portion of the secrecy of my ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required materials and send the documents immediately by air mail or place them in

delivery to the appropriate county board of elections." followed by the voter's signature and date of signature; and

- (2) Contain the voter's signature and must be witnessed by two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or 163-237(b1).

*History Note: Authority G.S. 163-22; 163-257;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 12 .0105 GENERAL GUIDELINES

(a) A qualified voter under G.S. 163-245 may apply by mail or by facsimile (fax) transmission to the board of elections office for an absentee ballot. The application must include the address or, if the applicant requests delivery of an absentee ballot by facsimile (fax) transmission, the telephone facsimile (fax) transmission number, to which the absentee ballot is to be returned, the applicant's full North Carolina residence address, date of birth, and the applicant's signature.

(b) For the purposes of these rules, requests should be made on the Federal Post Card Application (FPCA). Note that an absentee ballot application submitted under this section must permit the person to register to vote and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) An application requesting delivery of an absentee ballot by mail may be received by the board at any time. Also, an application for an absentee ballot for a state election from a qualified voter requesting delivery of an absentee ballot by facsimile (fax) transmission may be received by the county board of elections at any time before the election for which the absentee ballot is sought.

(d) After receipt of an application, the county board of elections shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious delivery service. However, if the applicant requests that an absentee ballot be sent by facsimile (fax) transmission, the board of elections office shall send the absentee ballot and other absentee voting material to the applicant by facsimile (fax) transmission utilizing the methods recommended by the Federal Voting Assistance Program (FVAP).

*History Note: Authority G.S. 163-22; 163-247(1); 163-257;
Temporary Adoption Eff. April 15, 2002.*

08 NCAC 12 .0106 PROCESSES BY MAIL

(a) The absentee ballot number and other absentee voting information shall be entered into the register of absentee requests, applications, and ballots issued. Upon receiving the request to receive voting materials by mail, the board shall cause to be mailed to the voter in a single package:

- (1) the official ballots the voter is entitled to vote;
- (2) a container-return envelope for the ballots, printed in accordance with G.S. 163-229; and
- (3) An instruction sheet.

(b) If the absentee ballot and other absentee voting materials are mailed to the applicant, the container return envelope sent with the ballot and other materials shall be addressed to the election

director of the county in which the voter is domiciled and registered.

(c) Upon receipt of an absentee ballot by mail, the voter, in the presence of two other persons who are at least 18 years of age, and who are not disqualified, shall:

- (1) Mark the ballots, or cause them to be marked by one of such persons in the voter's presence according to the voter's instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence; and
- (4) Make the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

(d) The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the board who issued them as follows: All ballots issued under the provisions of G.S. 163, Articles 20 and 21 shall be transmitted by mail or placed in delivery, at the voter's expense, and delivered not later than 5:00 p.m. on the day before the primary, special or general election.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0107 PROCESSES BY FAX

(a) Faxed ballots must be received by 500 p.m. on the day before the primary, special or general election and that the original voted ballots for faxed ballots must be mailed or placed in delivery as soon as practicable to serve as a fail-safe mechanism and serve as part of the election audit trail.

(b) The board shall maintain a record of the name of each voter to whom an absentee ballot is sent under G.S. 163, Articles 20 and 21. The record must list the date on which the ballot is mailed or provided by facsimile (fax) transmission and the date on which the ballot is received by the board of elections office and the dates on which the ballot was executed and postmarked.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0108 ABSENTEE VOTING BY FACSIMILE (FAX) TRANSMISSION

(a) An application for an absentee ballot shall indicate that the absentee ballot returned by facsimile (fax) transmission will be accepted if received by the board no later than 5:00 p.m. the day before an election. The application shall also indicate that the original ballot must be mailed or placed in delivery. The application must include the voter's name, North Carolina residence address, ballot mailing address or telephone number of the facsimile machine to which the ballot is to be sent, date of birth and signature.

(b) An application for an absentee ballot received by facsimile (fax) transmission shall indicate that the absentee ballot returned by mail will be accepted by the board subject to the provisions of G.S. 163, Article 21.

(c) An application for an absentee ballot received by facsimile (fax) transmission will be treated in the same manner as an application for an absentee ballot received by mail, except that a

notation will be made on the absentee ballot application log when an application is received by facsimile (fax) transmission.

(d) If an absentee ballot is sent to a voter by facsimile (fax) transmission, the ballot will include:

- (1) a transmittal form that fulfills all transmission information requirements;
- (2) instructions to the voter with procedures for returning the completed ballot by facsimile (fax) transmission or by mail, including a telephone number for the State Board of Elections dedicated fax line to which all ballots returned by facsimile (fax) transmission are to be transmitted, and the address of the appropriate office to which the ballot must be mailed; and
- (3) the statements required with places for the voter and witnesses to sign.

(e) The instructions sent to the voter will include a description of the procedures that a voter returning the ballot must follow. The instructions will also inform the voter that if the voter follows these instructions, the ballot will be counted, unless it is sent in violation of G.S. 163, Articles 20 or 21 or is otherwise ineligible. The instructions will also inform the voter that the voter assumes the risk that faulty facsimile (fax) transmission may occur.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0109 RECEIVING FACSIMILE (FAX) TRANSMISSIONS

(a) When a completed absentee ballot is received by facsimile (fax) transmission, the board of elections will note the date of receipt on the absentee ballot application log and, if the ballot is received on the day before election day, the time of receipt. The board of elections will then remove the ballot portion of the transmission from the portion that identifies the voter; place the ballot portion in a container-return envelope of the type used for absentee ballots returned by mail; seal the envelope; and maintain the voted ballot and envelope in a secure location for county board of elections consideration.

(b) A county board of elections may not accept multiple transmissions of a voted ballot or any other voting material submitted by the voter. The earliest date and timed version of a voted ballot or any other voting material received by the board of elections will be accepted. All other versions of a voted ballot or any other voting material will be rejected, except in the following circumstances: an incomplete fax transmission occurs and calls for a new complete fax transmission, and/or the original voted ballot which will be retained for audit purposes or used as a fail-safe mechanism.

(c) An absentee ballot that is returned by facsimile (fax) transmission must be received by the board of elections no later than 5:00 p.m., Eastern Standard Time, on the day before election day in order to be counted. Faxed ballots will not be accepted after that time, except votes for President and Vice-President of the United States may be received by fax or other delivery by the close of polls on election day. The original voted ballots transmitted by airmail or placed in delivery should be received, however, failure to receive the original voted ballot does not disqualify the faxed ballot. All approved absentee

ballots returned by facsimile (fax) transmission will be hand-counted.

(d) Procedures for handling mail-in ballots that were sent to the voter electronically shall be the same as for other mail-in absentee ballots.

- (1) An absentee ballot that was sent to a voter by facsimile (fax) transmission and was returned by mail will not be counted if the envelope in which the ballot is returned contains the ballot of more than one voter.
- (2) Immediately after a copy of the voted ballot has been faxed to the county board, the voter shall place the original voted ballot in a secure envelope, together with a certificate as provided for in these Rules, and send the documents by air mail or place them in delivery to the county board office.
- (3) All copies of voted ballots received by fax shall be approved, disapproved, processed, and counted, and disputes in connection therewith shall be handled in the same manner as applicable to other absentee ballots. Transmission problems that result in failure of the faxed ballot to be received by the board will result in the original voted ballot (hard copy) serving as a fail-safe mechanism. Fail-safe ballots must be submitted by the deadlines for counting absentee ballots under G.S. 163, Article 21. Original voted ballots will be used as part of the audit process and as part of the election record in any election protest(s).

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0110 BALLOT VERIFICATION AND SECURITY

(a) The county board shall take all necessary precautions to preserve the security of the ballot materials and specifically shall ensure that the vote cast by a voter using a faxed ballot is not revealed, except to the extent necessary by law or judicial determination. Upon the completion of all inspections of a faxed ballot required by law, the board or any employee thereof acting under its direction shall promptly separate the waiver from the faxed ballot. Any person handling a faxed ballot shall not identify the votes cast by any voter, except upon judicial determination.

(b) Prior to certification of the results of the election, the county board shall:

- (1) Compare the information on the faxed copy of each voted ballot with the same on the original voted ballot sent by air mail or placed in delivery by the voter who faxed to the county board a copy of the voted ballot, and the signature on the statement received by fax with the signature on the certificate received by air mail or delivery; and
- (2) Ascertain whether an original voted ballot has been received for each faxed copy of a voted ballot received and counted. Note that failure to receive an original voted ballot by the

deadline shall not result in the faxed ballot being disqualified.

(c) Whenever the particulars of the faxed copy of a voted ballot of a voter do not conform exactly with the particulars of the original voted ballot sent by air mail or delivery to the county board afterwards by that voter and whenever an original voted ballot has not been received which corresponds to a faxed copy of a voted ballot which has been received, those ballots and all other pertinent documents and information relative to those ballots shall be turned over to the investigative staff of the State Board of Elections for further investigation.

(d) Within 30 days after the election, the county board shall gather and keep together the faxed copy of the voted ballot, the certified statement and the original voted ballot sent by air mail or delivery of each voter who transmitted a copy of a voted ballot by fax. Those ballots needed for an investigation conducted by the investigative staff of the State Board of Elections or by law enforcement officials shall be returned to the county board as soon as practicable after the conclusion of the investigation. All ballots and documents relative to a faxed copy of a voted ballot received by the county board shall be retained by it for the period required by law for retention of other materials relevant to the election.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

08 NCAC 12 .0111 OTHER PROVISIONS

(a) The State Board of Elections agrees, unless the State Board of Election directs otherwise, to participate in any pilot projects sponsored by the Department of Defense to assist in improving processes for faxing or emailing voting information and materials. Should the State Board of Elections participate in a project, a full report shall be written by the staff regarding the pilot project for State Board consideration.

(b) Transmission details including preferred transmission times to county boards will be ascertained according to local needs. General procedures will be developed to accommodate for this part of the process.

(c) All county boards of elections plans for sending and receiving voting information and materials via electronic transmission must be submitted and approved by the State Board of Elections. Plans must include information regarding the type of equipment being used—type of fax machine, serial number, location of equipment, and security measures employed.

History Note: Authority G.S. 163-22; 163-257; Temporary Adoption Eff. April 15, 2002.

Rule-making Agency: *NC State Board of Elections*

Rule Citation: *08 NCAC 13 .0101*

Effective Date: *March 14, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 163-22.2*

TEMPORARY RULES

Reason for Proposed Action: *When the North Carolina Supreme Court issued the March 7, 2002 Order in Stephenson v. Bartlett, it had the effect of holding part of the North Carolina election law invalid. Based upon that fact, the precondition in G.S. 163-22.2 was satisfied, and the State Board had authority to issue temporary rules and regulations to deal with election issues created by the Order. The March 12, 2002 Order of the*

State Board is to be considered a temporary rule under G.S. 163-22.2.

Comment Procedures: *The March 12, 2002 Order of the State Board of Elections was issued under authority granted under G.S. 163-22.2. The effect of the Order is to delay all elections, primaries, and referenda that had been set for May 7, 2002.*

CHAPTER 13 – INTERIM RULES

SECTION .0100 – INTERIM RULES

**08 NCAC 13 .0101 IN THE MATTER OF THE MAY 7, 2002 PRIMARIES
BEFORE THE STATE BOARD OF ELECTIONS**

NORTH CAROLINA
WAKE COUNTY

IN THE MATTER OF
THE 2002 PRIMARY
ELECTION

ORDER

THIS CAUSE coming before the State Board of Elections at its meeting on March 12, 2002, at its offices in Raleigh, North Carolina.

After discussion and an opportunity for public comment, the State Board, upon motion by Mr. Winfree, seconded by Ms. Sims, and amended at the suggestion of Chairman Leake, with the consent of Mr. Winfree, unanimously voted to delay all primaries, elections, and referenda set for May 7, 2002, and to meet immediately after a ruling is issued by the North Carolina Supreme Court on the constitutionality of the legislative redistricting plans adopted by the General Assembly in 2001.

THEREFORE, it is ordered, adjudged and decreed that primaries, elections, and referenda set for May 7, 2002 are hereby delayed pending action of the North Carolina Supreme Court, in the case of Stephenson v. Bartlett, No. 94 P02. The State Board of Elections will meet as soon as possible after the Court rules to decide what action is appropriate at that time.

This the 12th day of March, 2002.

Larry Leake, Chairman

History Note: Authority G.S. 163-22.2; Temporary Adoption Eff. March 14, 2002, and will become null and void 60 days after the convening of the next regular session of the General Assembly.

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

Rule-making Agency: *NC Medical Care Commission*

Rule Citation: *10 NCAC 03C .3102, .4305; 03R .1413-.1417*

Effective Date: *March 15, 2002*

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

Authority for the rulemaking: *G.S. 131E-79; S.L. 2001, c. 410*

Reason for Proposed Action:

10 NCAC 03C .3102, .4305 - The NC General Assembly recently ratified House Bill 1147 (Session Law 2001-410). This legislation amends G.S. 131E-83 and directs the NC Medical Care Commission to adopt temporary rules "setting forth conditions for licensing neonatal care beds." The Commission needs to adopt temporary amendments to rules 10 NCAC 03C .3102 and .4305 to meet this legislative mandate. The public was given prior notice to this rule-making action in three ways: (1) a Notice of Proposed Rule-making Proceedings was published in Volume 16, Issue 08 of the North Carolina Register; and (2) a Notice was published at the Division's website (<http://www.facility-services.state.nc.us>) under the section titled "What's New;" and (3) the text of the proposed

rules were published in Volume 16, Issue 14 of the North Carolina Register.

10 NCAC 03R .1413-.1417 – The NC General Assembly recently ratified House Bill 1147 (Session Law 2001-410). This legislation amends G.S. 131E-83 and directs the NC Medical Care Commission to adopt temporary rules "setting forth conditions for licensing neonatal care beds." The Commission needs to adopt temporary amendments to rules 10 NCAC 03C .3102 and .4305 to meet this legislative mandate. Rules 10 NCAC 03R .1413-.1417 are Certificate of Need (CON) rules and must now be amended to conform – and ensure consistency – with the changes to 10 NCAC 03C .3102 and .4305. The public was given prior notice to this rule-making action in three ways: (1) a Notice of Proposed Rule-making Proceedings was published in Volume 16, Issue 08 of the North Carolina Register; and (2) a Notice was published at the Division's website (<http://www.facility-services.state.nc.us>) under the section titled "What's New;" and (3) the text of the proposed rules were published in Volume 16, Issue 14 of the North Carolina Register.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Mark Benton, Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03C – LICENSING OF HOSPITALS

SECTION .03100 - PROCEDURE

10 NCAC 03C .3102 PLAN APPROVAL

(a) The facility design and construction shall be in accordance with the construction standards of the Division, the North Carolina Building Code, and local municipal codes.

(b) Submission of Plans:

- (1) Before construction is begun, color marked plans, and specifications covering construction of the new buildings, alterations or additions to existing buildings, or any change in facilities shall be submitted to the Division for approval.
- (2) The Division will review the plans and notify the licensee that said buildings, alterations, additions, or changes are approved or disapproved. If plans are disapproved the Division shall give the applicant notice of deficiencies identified by the Division.
- (3) In order to avoid unnecessary expense in changing final plans, a preliminary step, proposed plans in schematic form shall be reviewed by the Division.
- (4) The plans shall include a plot plan showing the size and shape of the entire site and the location of all existing and proposed facilities.
- (5) Plans shall be submitted in triplicate in order that the Division may distribute a copy to the Department of Insurance for review of State Building Code requirements and to the Department of Environment, Health, and

Natural Resources for review under state sanitation requirements.

(c) Location:

- (1) The site for new construction or expansion shall be approved by the Division.
- (2) Hospitals shall be so located that they are free from undue noise from railroads, freight yards, main traffic arteries, schools and children's playgrounds.
- (3) The site shall not be exposed to smoke, foul odors, or dust from nearby industrial plants.
- (4) The area of the site shall be sufficient to permit future expansion and to provide adequate parking facilities.
- (5) Available paved roads, adequate water, sewage and power lines shall be taken into consideration in selecting the site.

(d) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding Certificate of Need. A facility shall be licensed for no more beds than the number for which required physical space and other required facilities are available. Neonatal Level I, Level II and III beds are considered part of the licensed bed capacity. ~~beds for licensure purposes, but Level I (bassinets for newborns) are not considered part of licensed bed capacity.~~ Newborn nursery bassinets are not considered part of the licensed bed capacity however, no more bassinets shall be placed in service than the number for which required physical space and other required facilities are available.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Temporary Amendment Eff. March 15, 2002.

10 NCAC 03C .4305 ORGANIZATION OF NEONATAL SERVICES

(a) The governing body shall approve the scope of all neonatal services and the facility shall classify its capability in providing a range of neonatal services using the following criteria:

- (1) ~~LEVEL I or Neonate~~ Newborn Nursery: Full-term and pre-term neonates ~~or infants~~ that are stable without complications; may include ~~premature~~, small for gestational age or large for gestational age neonates;
- (2) ~~LEVEL III~~ LEVEL I: III neonates or infants requiring less constant nursing care but does not exclude respiratory support ~~Neonates or infants that are stable without complications but require special care and frequent feedings; infants of any weight who no longer require Level II or Level III neonatal services, but who still require more nursing hours than normal infants; and infants who require close observation in a licensed acute care bed; may serve as "step-down" unit from LEVEL III; and~~
- (3) ~~LEVEL III~~ LEVEL II: Medically unstable or critically ill neonates or infants requiring constant nursing care or supervision involving complicated surgical procedures, continual respiratory or other intensive interventions.

Neonates or infants that are high-risk, small (or approximately 32 and less than 36 completed weeks of gestational age) but otherwise healthy, or sick with a moderate degree of illness that are admitted from within the hospital or transferred from another facility requiring intermediate care services for sick infants, but not requiring intensive care; may serve as a "step-down" unit from Level III. Level II neonates or infants require less constant nursing care, but care does not exclude respiratory support; and

(4) LEVEL III (Neonatal Intensive Care Services): High-risk, medically unstable or critically ill neonates approximately under 32 weeks of gestational age, or infants, requiring constant nursing care or supervision not limited to continuous cardiopulmonary or respiratory support, complicated surgical procedures, or other intensive supportive interventions.

(b) The facility shall provide for the availability of equipment, supplies, and clinical support services.

(c) The medical and nursing staff shall develop and approve policies and procedures for the provision of all neonatal services.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Temporary Amendment Eff. March 15, 2002.

SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

SECTION .1400 - CRITERIA AND STANDARDS FOR NEONATAL SERVICES

10 NCAC 03R .1413 DEFINITIONS

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

- (1) "Approved neonatal service" means a neonatal service that was not operational prior to the beginning of the review ~~period but that had been issued a certificate of need or for which development had been initiated prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12 period.~~
- (2) "Existing neonatal service" means a neonatal service in operation prior to the beginning of the review period.
- (3) "High-risk obstetric patients" means those patients requiring specialized services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery. The services are characterized by specialized facilities and staff for the intensive care and management of high-risk maternal and fetal patients before, during, and after delivery.
- (4) "Level I neonatal service" means ~~those routine~~ services provided by an acute care hospital ~~in a licensed acute care bed to normal full-term and~~

- (5) ~~pre-term infants weighing at least 2000 grams at birth or infants of any weight who are convalescing from Level II or Level III services. Level I neonatal services include the observation, screening, and stabilization of infants following birth who are served in a bassinet; infants who are not sick but who neonates and infants that are stable without complications but require special care and frequent feedings; infants of any weight who no longer require Level II or Level III neonatal services, but still require more nursing hours than normal infants; and infants who require close observation in a licensed acute care bed.~~ "Level II neonatal service" means services provided by an acute care hospital in a licensed acute care bed to the performance of Level I neonatal services, plus the management of neonates or infants that are high-risk, small, and small (approximately 32 and less than 36 completed weeks of gestational age) but otherwise healthy, or sick neonates with a moderate degree of illness that are admitted from within the hospital or transferred from another facility. Level II neonatal services involve the management of newborns weighing between approximately 1,500 2,500 grams (or approximately 32 and less than 36 completed weeks of gestational age) that are relatively healthy, or involve facility requiring intermediate care services for sick infants ~~infants, but who do not require intensive care but who do require six to twelve nursing hours per day. Level II neonatal services are provided in a licensed acute care bed care. Level II neonates or infants require less constant nursing care than Level III services, but care does not exclude respiratory support.~~
- (6) "Level III neonatal service" means ~~the performance of Level I and Level II neonatal services plus the management of high-risk newborns weighing less than 1,500 grams (or approximately under 32 weeks of gestational age), which requires neonatal expertise. Level III neonates require constant nursing care, including but neonatal intensive care services provided by an acute care hospital in a licensed acute care bed to high-risk medically unstable or critically ill neonates (approximately under 32 weeks of gestational age) or infants requiring constant nursing care or supervision not limited to continuous cardiopulmonary and other supportive care, care required for neonatal surgery patients and other intensive care services. Level III neonatal services are provided in a licensed acute care bed, or respiratory support, complicated surgical procedures, or other intensive supportive interventions.~~

- (7) "Neonatal bed" means a licensed acute care bed used to provide Level I, II, or III neonatal services.
- ~~(7)(8)~~ "Neonatal intensive care services" shall have the same meaning as defined in G.S. 131E-176(15b).
- ~~(8)(9)~~ "Neonatal service area" means a geographic area defined by the applicant from which the patients to be admitted to the service will originate.
- ~~(9)(10)~~ "Neonatal services" means any of the Level I, Level II or Level III services defined in this Rule.
- (11) "Newborn nursery services" means services provided by an acute care hospital to full term and pre-term neonates that are stable, without complications, and may include neonates that are small for gestational age or large for gestational age.
- ~~(10)(12)~~ "Obstetric services" means any normal or high-risk services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery.
- ~~(11)(13)~~ "Perinatal services" means services provided during the period shortly before and after birth.
- ~~(12)~~ "Perinatal region" means a geographic area of the state as established by the Perinatal Council. A copy of the perinatal regions may be obtained from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, 1330 St. Mary's Street, Raleigh, NC, 27605-3248.

- (3) evidence of the applicant's experience in treating the following patients at the facility during the past twelve months, including:
 - (A) the number of obstetrical patients treated at the acute care facility;
 - (B) the number of neonatal patients treated in Level I—newborn nursery bassinets, Level I beds, Level II beds and Level III beds, respectively;
 - (C) the number of inpatient days at the facility provided to obstetrical patients;
 - (D) the number of inpatient days provided in Level I beds, Level II beds and Level III beds, respectively;
 - (E) the number of high-risk obstetrical patients treated at the applicant's facility and the number of high-risk obstetrical patients referred from the applicant's facility to other facilities or programs; and
 - (F) the number of neonatal patients referred to other facilities for services, identified by required level of neonatal service (i.e. Level I, Level II or Level III);

- (4) the projected number of neonatal patients to be served identified by newborn nursery, Level I, Level II and Level III neonatal services and by county of residence for each of the first twelve quarters—three years of operation following the completion of the project, including the methodology and assumptions used for the projections;
- (5) the projected utilization of the Level I bassinets, number of patient days of care to be provided in the newborn nursery bassinets, Level I beds, Level II beds and Level III beds, respectively, by county of residence for each of the first twelve quarters—three years of operation following completion of the project, including the methodology and assumptions used for the projections;
- (6) if proposing to provide new newborn nursery or Level I neonatal services, documentation that at least 90 percent of the anticipated patient population is within 30 minutes driving time one-way from the facility;
- (7) if proposing to provide new newborn nursery or Level I neonatal services, documentation of a written plan to transport infants to Level II or Level III neonatal services as the infant's care requires;
- ~~(8)~~ if proposing to provide new Level II or Level III neonatal services, documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide very specialized

History Note: Authority G.S. 131E-177(1); 131E-183; Filed as a 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. March 15, 2002.

10 NCAC 03R .1414 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to develop a new neonatal service or to add a bed to an existing neonatal service newborn nursery service or increase the number of Level I, II, or III neonatal beds shall use the Acute Care Facility/Medical Equipment application form.
- (b) The An applicant proposing to develop a new newborn nursery service or increase the number of Level I, II, or III neonatal beds shall provide the following additional information:
 - (1) the current number of Level I—newborn nursery bassinets, Level I beds, Level II beds and Level III beds operated by the applicant;
 - (2) the proposed number of Level I—newborn nursery bassinets, Level I beds, Level II beds and Level III beds to be operated following completion of the proposed project;

- levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients; (9) ~~— evidence that existing and approved neonatal services and obstetric services in the applicant's perinatal region and in the applicant's defined neonatal service area are unable to accommodate the applicant's projected need for additional Level II and Level III services;~~
- (10) ~~— documentation of the availability of existing obstetric services; identification of all obstetrics programs and neonatal services which currently serve patients from the applicant's primary service area; and for those applicants proposing to establish or expand Level II and III neonatal services, the availability of high risk OB services at the site of the applicant's planned neonatal service;~~
- (11) ~~— an analysis of the proposal's impact upon existing and approved neonatal services in the same perinatal region(s) and those perinatal regions adjacent to the perinatal region(s) in which the applicant proposes to provide services, including but not limited to the proposal's effect on the utilization of existing neonatal services, except when an applicant demonstrates that they provide very specialized levels of neonatal care to a large and geographically diverse population;~~
- (12) ~~— evidence that the applicant shall have access to a transport service with at least the following components:~~
- (A) ~~— trained personnel;~~
- (B) ~~— transport incubator;~~
- (C) ~~— emergency resuscitation equipment;~~
- (D) ~~— oxygen supply, monitoring equipment and the means of administration;~~
- (E) ~~— portable cardiac and temperature monitors; and~~
- (F) ~~— a mechanical ventilator;~~
- (13) ~~— documentation that the new or additional neonatal service shall be coordinated with the existing statewide perinatal network, including but not limited to:~~
- (A) ~~— the Division of Maternal and Child Health of the Department of Environment, Health and Natural Resources,~~
- (B) ~~— the physicians' statewide neonatal bed locator system,~~
- (C) ~~— existing neonatal services,~~
- (D) ~~— existing obstetrical services,~~
- (E) ~~— home health care agencies,~~
- (F) ~~— other hospitals, and~~
- (G) ~~— local Departments of Social Services;~~
- (14) ~~— copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and~~
- (15) ~~— copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including but not limited to the following:~~
- (A) ~~— the admission and discharge of patients;~~
- (B) ~~— infection control;~~
- (C) ~~— pertinent safety practices;~~
- (D) ~~— the triaging of patients requiring consultations, including the transfer of patients to another facility; and~~
- (E) ~~— the protocol for obtaining emergency physician care for a sick infant.~~
- (c) ~~— An applicant proposing to provide new or additional neonatal services shall provide the following:~~
- (1) ~~— documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;~~
- (2) ~~— documentation to show that the new or additional Level I, Level II or Level III neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;~~
- (3) ~~— a detailed floor plan of the proposed area drawn to scale;~~
- (4) ~~— documentation of direct or indirect visual observation by unit staff of all patients from one or more vantage points; and~~
- (5) ~~— documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.~~
- (8) ~~— evidence that the applicant shall have access to a transport service with at least the following components:~~
- (A) ~~— trained personnel;~~
- (B) ~~— transport incubator;~~
- (C) ~~— emergency resuscitation equipment;~~
- (D) ~~— oxygen supply, monitoring equipment and the means of administration;~~
- (E) ~~— portable cardiac and temperature monitors; and~~
- (F) ~~— a mechanical ventilator;~~
- (9) ~~— documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;~~
- (10) ~~— documentation to show that the new or additional Level I, Level II or Level III neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;~~
- (11) ~~— a detailed floor plan of the proposed area drawn to scale;~~
- (12) ~~— documentation of direct or indirect visual observation by unit staff of all patients from one or more vantage points; and~~

(13) documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.

(c) If proposing to provide new Level II or Level III neonatal services the applicant shall also provide the following information:

- (1) documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide very specialized levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients;
- (2) evidence that existing and approved neonatal services in the applicant's defined neonatal service area are unable to accommodate the applicant's projected need for additional Level II and Level III services;
- (3) an analysis of the proposal's impact on existing Level II and Level III neonatal services which currently serve patients from the applicant's primary service area;
- (4) the availability of high risk OB services at the site of the applicant's planned neonatal service;
- (5) copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and
- (6) copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including but not limited to the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) pertinent safety practices;
 - (D) the triaging of patients requiring consultations, including the transfer of patients to another facility; and
 - (E) the protocols for obtaining emergency physician care for a sick infant.

History Note: Authority G.S. 131E-177(1); 131E-183; Filed as a 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. March 15, 2002.

10 NCAC 03R .1415 REQUIRED PERFORMANCE STANDARDS

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

- ~~(1) applicants proposing new or additional Level I services shall perform or project to perform, at~~

~~least 500 deliveries per year, except that a variance from this standard shall be allowed to the extent that a major portion of the population to be served residemore than 45 minutes automobile driving time one way from existing inpatient neonatal services;~~

~~(2) applicants proposing new or additional Level I services shall demonstrate that the following standards will be met:~~

~~(A) the occupancy of the applicant's total number of neonatal beds is projected to be 50% or more during the first year of operation following completion of the proposed project. Provide all assumptions and data supporting the methodology used for the projections;~~

~~(B) if an applicant is proposing additional Level I services and does not currently provide Level II or Level III services, the projected occupancy of the proposed service shall be at least 75% after the second year of operation following completion of the proposed project and provide all assumptions and data supporting the methodology used for the projections;~~

~~(C) if an applicant is proposing additional Level I services and currently provides Level II or Level III services, the projected occupancy of all neonatal services in the facility shall be at least 65% after the second year of operation following completion of the proposed project, and provide all assumptions and data supporting the methodology used for the projections;~~

~~(D) the total number of Level I neonatal bassinets and Level I neonatal beds projected to be operated in the facility shall exceed the number of obstetric beds in the facility by at least 25%; and (E) the total number of Level I neonatal bassinets and Level I neonatal beds projected to be operated in the facility shall exceed the number of obstetric beds in the facility by at least 35% if Level II or Level III services will be provided in the facility;~~

- ~~(1) an applicant proposing a new newborn nursery, new Level I services, or additional Level I beds shall demonstrate that the occupancy of the applicant's total number of neonatal beds is projected to be at least 50% during the first year of operation and at least 65% during the third year of operation following completion of the proposed project;~~
- ~~(3)(2) if an applicant proposes an increase in the number of the facility's existing Level II or~~

Level III beds, the overall average annual occupancy of the total number of existing Level II and Level III beds in the facility is at least 75%, over the 12 months immediately preceding the submittal of the proposal; and

~~(4)(3)~~ if an applicant is proposing to develop new or additional Level II or Level III beds, the projected occupancy of the total number of Level II and Level III beds proposed to be operated ~~after the second during the third~~ year of operation of the proposed project shall be at least 75%. ~~The applicant shall document the assumptions and provide data supporting the methodology used for the projections.~~

(4) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

(b) If an applicant proposes to develop a new Level II or Level III ~~service service~~, the applicant shall document that an unmet need exists ~~in the perinatal region or~~ in the applicant's defined neonatal service area. The need for Level II and Level III beds shall be computed for ~~each of the perinatal regions in North Carolina or in~~ the applicant's neonatal service area by:

- (1) identifying the annual number of live births occurring at all hospitals within the ~~perinatal region or~~ proposed neonatal service area, using the latest available data compiled by the State Center for Health ~~and Environmental~~ Statistics;
- (2) identifying the low birth weight rate (percent of live births below 2,500 grams) for the births identified in (1) of this Paragraph, using the latest available data compiled by the State Center for Health ~~and Environmental~~ Statistics;
- (3) dividing the low birth weight rate identified in (2) of this Paragraph by .08 and subsequently multiplying the resulting quotient by four; and
- (4) determining the need for Level II and Level III beds in the ~~perinatal region or~~ proposed neonatal service area as the product of:
 - (A) the product derived in (3) of this Paragraph, and
 - (B) the quotient resulting from the division of the number of live births in the initial year of the determination identified in (1) of this Paragraph by the number 1000.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Filed as a 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. March 15, 2002.

10 NCAC 03R .1416 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to provide new ~~or additional~~ Level I, Level II or Level III services shall document that the following items shall be available, unless an item shall not be available,

then documentation shall be provided obviating the need for that item:

- (1) competence to manage uncomplicated labor and delivery of normal term newborn;
- (2) capability for continuous fetal monitoring;
- (3) a continuing education program on resuscitation to enhance competence among all delivery room personnel in the immediate evaluation and resuscitation of the newborn and of the mother;
- (4) obstetric services;
- (5) anesthesia services;
- (6) capability of cesarean section within 30 minutes at any hour of the day; and
- (7) twenty-four hour on-call blood bank, radiology, and clinical laboratory services.

(b) An applicant proposing to provide new ~~or additional~~ Level II or Level III services shall document that the following items shall be available, unless any item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) competence to manage labor and delivery of premature newborns and newborns with complications;
- (2) twenty-four hour availability of microchemistry hematology and blood gases;
- (3) twenty-four hour coverage by respiratory therapy;
- (4) twenty-four hour radiology coverage with portable radiographic capability;
- (5) oxygen and air and suction capability;
- (6) electronic cardiovascular and respiration monitoring capability;
- (7) vital sign monitoring equipment which has an alarm system that is operative at all times;
- (8) capabilities for endotracheal intubation and mechanical ventilatory assistance;
- (9) cardio-respiratory arrest management plan;
- (10) isolation capabilities;
- (11) social services staff;
- (12) occupational or physical therapies with neonatal expertise; and
- (13) a registered dietician or nutritionist with training to meet the special needs of neonates.

(c) An applicant proposing to provide new ~~or additional~~ Level III services shall document that the following items shall be available, unless any item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) pediatric surgery services;
- (2) ophthalmology services;
- (3) pediatric neurology services;
- (4) pediatric cardiology services;
- (5) on-site laboratory facilities;
- (6) computed tomography and pediatric cardiac catheterization services;
- (7) emergency diagnostic studies available 24 hours per day;
- (8) designated social services staff; and
- (9) serve as a resource center for the statewide perinatal network.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Filed as a 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. March 15, 2002.

**10 NCAC 03R .1417 REQUIRED STAFFING AND
STAFF TRAINING**

An applicant shall demonstrate that the following staffing
requirements for hospital care of newborn infants shall be met:

- (1) If proposing to provide new ~~or additional~~
Level I services the applicant shall provide
documentation to demonstrate that:
 - (a) the nursing care shall be supervised
by a registered nurse in charge of
perinatal facilities;
 - (b) a physician is designated to be
responsible for neonatal care; and
 - (c) the medical staff will provide
physician coverage to meet the
specific needs of patients on a 24
hour basis.
- (2) If proposing to provide new ~~or additional~~
Level II services the applicant shall provide
documentation to demonstrate that:
 - (a) the nursing care shall be supervised
by a registered nurse;
 - (b) the service shall be staffed by a board
certified pediatrician; and
 - (c) the medical staff will provide
physician coverage to meet the
specific needs of patients on a 24
hour basis.
- (3) If proposing to provide new ~~or additional~~
Level III services the applicant shall provide
documentation to demonstrate that:
 - (a) the nursing care shall be supervised
by a registered nurse with educational
preparation and advanced skills for
maternal-fetal and neonatal services;
 - (b) the service shall be staffed by a full-
time board certified pediatrician with
certification in neonatal medicine;
and
 - (c) the medical staff will provide
physician coverage to meet the
specific needs of patients on a 24
hour basis.
- (4) All applicants shall submit documentation
which demonstrates the availability of
appropriate inservice training or continuing
education programs for neonatal staff.
- (5) All applicants shall submit documentation
which demonstrates the proficiency and ability
of the nursing staff in teaching parents how to
care for neonatal patients following discharge
to home.
- (6) All applicants shall submit documentation to
show that the proposed neonatal services will

be provided in conformance with the
requirements of federal, state and local
regulatory bodies.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Filed as a 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. March 15, 2002.

Rule-making Agency: *Division of Facility Services*

Rule Citation: *10 NCAC 03R .1914, .6374, .6383*

Effective Date: *March 15, 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:

10 NCAC 03R.1914 - A technical change is needed to eliminate conflicting references to ESTV treatment utilization. When this temporary amendment was adopted in January 1, 2002 (as part of the 2002 State Medical Facilities Plan), we failed to replace all three references of "250 patients or 6,500 ESTV treatments" with "6,750 ESTV treatments." Subsections (1) and (3) were correctly amended, however we failed to make the same change to (2). This amendment will correct that oversight, eliminate any confusion regarding utilization rates, and ensure consistency with the 2002 State Medical Facilities Plan.

10 NCAC 03R .6374, .6383 - The annual State Medical Facilities Plan (SMFP) contains an inventory of facilities/beds/equipment in addition to varying methodologies. That information is used to determine the "need" for new health care facilities and services each year. As the inventory of facilities, beds and equipment is updated throughout the year, amendments to the temporary rules are sometimes necessary. 10 NCAC 03R .6374 is being amended to reflect a change in the inventory of adult care home beds in Madison county, and 10 NCAC 03R .6383 is being amended to reflect a change in chemical dependency detox-only beds in Mental Health Planning Area 17.

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

CHAPTER 03 – FACILITY SERVICES

**SUBCHAPTER 03R – CERTIFICATE OF NEED
REGULATIONS**

**SECTION .1900 – CRITERIA AND STANDARDS FOR
RADIATION THERAPY EQUIPMENT**

TEMPORARY RULES

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); Filed as 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; Temporary Amendment Eff. March 15, 2002.

SECTION .6300 – PLANNING POLICIES AND NEED DETERMINATION FOR 2001

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 10
Gates	30
Graham	10
Greene	30
Halifax	40
Jones	30
Macon	130 120
Madison	20
Mitchell	80
Pender	80
Tyrrell	20
Washington	10

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002. Temporary Amendment Eff. March 15, 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

TEMPORARY RULES

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
<u>17 Durham</u>	<u>NC</u>	<u>10</u>
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
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.
Temporary Amendment Eff. March 15, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: DENR

Rule Citation: 15A NCAC 09C .1227

Effective Date: March 15, 2002

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 Dupont State Forest. This Rule establishes user fees for recreational facilities that are heavily used by the general public. Approval to charge these fees was granted by the Natural and Economic Resources – Transportation – Information Technology subcommittee of the

TEMPORARY RULES

Joint Legislative Commission on Governmental Operations on February 19, 2002.

CHAPTER 09 – DIVISION OF FOREST RESOURCES

SUBCHAPTER 09C – DIVISION PROGRAMS

SECTION .1200 - DUPONT STATE FOREST

Comment Procedures: The public is invited to make comments on these rules. Contact John Pearson or Ed Goforth, (828) 251-6509.

15A NCAC 09C .1227 FEES AND CHARGES

The following fee schedule shall apply at Dupont State Forest. Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular site may be limited by the forest supervisor depending upon the size of the camping group and the size and nature of the campsite. The forest supervisor may waive fees for groups performing volunteer trail maintenance or other activities providing benefit to the forest.

Table with 2 columns: TYPE OF FACILITY OR CONVENIENCE and FEE. Rows include (1) CAMPING (Primitive, Primitive group tent, Improved group), (2) PICNIC SHELTER RENTAL, (3) COMMUNITY BUILDINGS, (4) HORSE BARN, and (5) SPECIAL ACTIVITY PERMIT.

History Note: Authority G. S. 113-35 (b); Temporary Adoption Eff. March 15, 2002.

Rule-making Agency: Commission for Health Services

Rule Citation: 15A NCAC 21D .0202, .0410-.0411, .0501, .0503, .0702-.0704, .0706, .0802, .0804-.0806, 0902-.0911

Effective Date: July 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-361

Reason for Proposed Action: These proposed temporary rules are required to meet new federal regulations (7 CFR Part 246) dealing with the Food Service Delivery of the WIC Program. The regulations are designed to strengthen WIC vendor management in the retail food delivery system. They specifically include establishing mandatory selection criteria for vendors, training requirements, and criteria for high-risk vendors. The regulations also strengthen food accountability and sanctions for participants who violate program requirements. The federal deadline to implement these regulations is October 1, 2002. However, staff of the WIC Program plan to implement these

changes effective July 1, 2002 since that is the start of our annual contact cycle with over 2,100 WIC vendors.

Comment Procedures: Comments, statements, data and other information may be submitted in writing within 30 days of publication of this issue of the NC Register. Copies of the proposed rules and information packets may be obtained by contacting the Nutrition Services Branch at 919/715-0647. Written comments may be sent to Cory Menees, Nutrition Services Branch, 1914 Mail Service Center, Raleigh, NC 27699-1914.

CHAPTER 21 – HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D – WIC/NUTRITION

SECTION .0200 – WIC PROGRAM GENERAL INFORMATION

15A NCAC 21D .0202 DEFINITIONS

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

TEMPORARY RULES

- (1) An "administrative appeal" is ~~a procedure to be followed when an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, or authorized WIC vendor or potential authorized WIC vendor wishes to may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i) an action by the local WIC agency or the state agency which affects participation in the WIC program by the agency or vendor. An administrative appeal may also be called a fair hearing.~~
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food ~~vendor retailer~~ or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- ~~(4)~~ A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- ~~(4)(5)~~ A "competent health professional" is a physician, registered nurse, nutritionist, registered dietitian, or nutrition trainee or home economist (who is under the supervision of a nutritionist), or other qualified individuals approved by the Nutrition Services Branch. These individuals must be on the staff of the local WIC agency or designated by the local WIC agency in order to certify and prescribe the food package.
- ~~(5)(6)~~ A "fair hearing" is the ~~procedure to be followed when a person or his/her parent or guardian wishes to appeal a decision made by a local WIC agency or the state agency which affects the individual's participation in the program. informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to making a formal appeal in accordance with G.S. 150B.~~
- ~~(6)(7)~~ A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
- ~~(7)(8)~~ "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- ~~(9)~~ "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and
- ~~(8)(10)~~ The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- ~~(9)(11)~~ A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
- ~~(12)~~ "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.
- ~~(13)~~ "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- ~~(40)(14)~~ The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- ~~(15)~~ "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- ~~(44)(16)~~ "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 15A NCAC 21D .0501 and is included in the WIC Vendor Manual.
- ~~(42)(17)~~ "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- ~~(18)~~ "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
- ~~(19)~~ "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- ~~(20)~~ A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- ~~(21)~~ A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has twenty or more stores authorized as WIC vendors under the Agreement.
- ~~(22)~~ "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- ~~(43)(23)~~ "WIC program" means the special supplemental nutrition program for women,

infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 07 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1330 St. Mary's Street, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002.

SECTION .0400 - ELIGIBILITY FOR WIC PROGRAM PARTICIPATION

15A NCAC 21D.0410 PARTICIPANT ABUSE

(a) The State agency shall assess a claim for the full value of Program benefits that have been obtained or disposed of improperly as the result of a participant violation. "Participant violation" means those violations listed in 7 C.F.R. 246.2 which are incorporated by reference in Rule .0202 of this Subchapter. A claim shall not be paid by offsetting the claim against future Program benefits. The state agency may delegate to the local agency the responsibility for collecting participant claims.

(b) The following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a one-year disqualification of the participant from the WIC Program, except as provided in Paragraphs (c) and (d) of this Rule:

- (1) Exchanging food instruments or supplemental food for cash;
- (2) Exchanging food instruments or supplemental food for alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802;
- (3) A claim for dual participation resulting from intentional misrepresentation;
- (4) Intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain Program benefits;
- (5) Any participant violation for which a claim of one hundred dollars (\$100.00) or more is assessed;
- (6) A second or subsequent claim assessed for any participant violation, regardless of the dollar amount. The second or subsequent claim does not have to be for the same participant violation as the initial claim to result in a one-year disqualification; and

(7) Physical harm to clinic or vendor staff.

(c) The one-year disqualification referenced in Paragraph (b) of this Rule will not be imposed against the participant if a claim is assessed and full payment is made or a repayment schedule satisfactory to the state agency is agreed upon within 30 days of receipt of a written demand for repayment of the claim for the improperly obtained or disposed of Program benefits.

(d) The one year disqualification referenced in Paragraph (b) of this Rule will not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(e) Except as provided in Subparagraphs (b)(5) and (b)(6) of this Rule, the following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first violation and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits:

- (1) Exchanging food instruments or supplemental food for credit;
- (2) Exchanging food instruments or supplemental food for non-food items, other than alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802; and
- (3) Exchanging food instruments or supplemental food for unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.

For the violations listed in this Paragraph, failure to pay a claim in full or agree to a repayment schedule satisfactory to the state agency within 30 days of receipt of a written demand for repayment of a claim, shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(f) The occurrence of a second or subsequent participant violation listed in Paragraph (e) of this Rule shall result in a one-year disqualification of the participant and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits. The second or subsequent violation does not have to be the same as the initial violation to result in a one-year disqualification. The one-year disqualification will not be imposed against the participant if full payment is made or a repayment schedule satisfactory to the state agency is agreed upon within 30 days of receipt of a written demand for repayment of a claim. Additionally, the one year disqualification will not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(g) Threatening physical harm to or verbal abuse of clinic or vendor staff by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first occurrence of this violation. A second occurrence within a 12-month period shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

TEMPORARY RULES

(h) For any disqualification imposed under this Rule, a participant can reapply for Program participation if during the period of the disqualification full payment is made or a repayment schedule satisfactory to the state agency is agreed upon, or in the case of a participant who is an infant, child, or under age 18, the state or local agency approves the designation of a proxy.

~~(a) The local WIC agency may disqualify a participant from participation in the WIC program for a period not to exceed three months if the local agency makes a finding of participant abuse.~~

~~(b) The local WIC agency may give a warning prior to disqualifying a participant for participant abuse.~~

~~(c)(i) The participant has a right to a fair hearing in accordance with Section .0900 of this Subchapter for sanctions imposed under this Rule, prior to disqualification from the WIC program.~~

~~(d) For the purposes of this Subchapter, "participant abuse" includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; and physical abuse, or threat of physical abuse, of clinic or vendor staff.~~

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1983; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0411 DUAL PARTICIPATION

(a) A participant shall not participate simultaneously in the WIC Program in one or more than one WIC clinic, or participate in the WIC Program and the Commodity Supplemental Food Program ("CSFP") during the same period of time. For purposes of this Rule, participate means certification as a WIC participant for the receipt of WIC food instruments or certification as a CSFP participant for the receipt of CSFP food.

(b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation in a single clinic, in accordance with 7 C.F.R. 246.7(l)(1)(iii) when a participant is found to be in violation of Paragraph (a) of this Rule.

(c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or child participant, or proxy shall be responsible for repaying Program benefits improperly issued as a result of the dual participation, and the participant shall be disqualified from participation in both Programs or clinic(s) in accordance with 7 C.F.R. 246.7(l)(1)(iv) and Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food instruments under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of the food instruments received under two or more of the identities constitutes dual participation based on intentional misrepresentation. Receiving WIC food instruments from more than one WIC clinic during the same issuance period and transacting one or more of the food instruments received from two or more of the clinics constitutes dual participation based on intentional misrepresentation. Additionally, receiving WIC food

instruments and CSFP food during the same time period and transacting one or more of the WIC food instruments constitutes dual participation based on intentional misrepresentation.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Temporary Adoption Eff. July 1, 2002.

SECTION .0500 – WIC PROGRAM FOOD PACKAGE

15A NCAC 21D .0501 SUPPLEMENTAL FOODS

(a) The foods which may be provided to WIC program participants are specified in 07 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of ~~Environment, Health, and Natural Resources, Health and Human Services~~, Division of ~~Maternal and Child Health, Nutrition Services Section, Public Health~~, 1330 Saint Mary's Street, Raleigh, North Carolina and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition service:

- (1) shredded cheese;
- (2) eggs other than grade A large or extra-large fresh and "cholesterol reducing";
- (3) infant cereal-fruit and cereal-formula combinations;
- (4) cheese in excess of four pounds per month, unless a physician documents that the recipient is lactose intolerant, or is a postpartum woman who is breast feeding exclusively;
- (5) all formulas other than standard milk-based iron fortified infant formulas, unless a physician prescribes a formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (6) if the WIC program executes a sole source contract for an infant formula, that formula shall be specified in the vendor ~~contract agreement~~ and on the food instrument, and all other formulas shall be excluded from the food package, unless a physician prescribes a different formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (7) infant juice;
- (8) peanut butter other than plain, smooth, crunchy or whipped;
- (9) dried beans and peas other than mature and unflavored;
- (10) tuna other than chunk light in water; and
- (11) carrots other than raw, canned or frozen.

(c) The state agency may waive application of this Rule and exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC program as a result of their composition, packaging or promotion in a manner which is

contrary to the purpose of the program as contained in Rule .0601(a) of this Subchapter.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. October 1, 1993; October 1, 1990; July 1, 1989; October 1, 1988; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0503 USE OF WIC SUPPLEMENTAL FOODS

WIC supplemental foods shall be provided for consumption by the participant and not be distributed for use by institutions such as child and day care centers.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. October 1, 1990; Temporary Amendment Eff. July 1, 2002.

SECTION .0700 – WIC PROGRAM FOOD DISTRIBUTION SYSTEM

15A NCAC 21D .0702 ISSUANCE OF FOOD INSTRUMENTS

(a) Local WIC agencies shall issue WIC program food instruments to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.

(b) Local WIC agencies shall issue food instruments in a manner which ensures maintenance of adequate security and retention of adequate documentation of the disposition of the food instruments. The documentation of issuance shall include the dated signature of the authorized individual receiving the food instruments unless the food instruments are mailed.

(c) The authorized individual receiving the food instrument shall sign it on the "signature" line. The person who so signs the food instrument is the only individual who can ~~redeem-transact~~ it.

(d) Participants shall be given appointments to receive food instruments in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members without placing an undue burden on the participant.

(e) Food instruments shall be issued only to the participant, the participant's parent, the participant's ~~guardian, caretaker~~, an authorized proxy, or a compliance investigator.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0703 USE OF FOOD INSTRUMENTS

(a) Participants may ~~redeem-transact~~ food instruments on any day on or between the "date of issue" and "participant must use by" dates assigned to the food instrument.

(b) North Carolina WIC program food instruments shall be ~~redeemed-transacted~~ only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement (DHHS Form 2768). Neither an agency of the United States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, ~~parent, guardian, parent or caretaker of an infant or child participant~~, or proxy is under any obligation to pay for food instruments accepted by a ~~vendor who store that~~ was not an authorized WIC vendor on the date of ~~redemption-transaction~~ of the food instrument.

(c) Only the individual who has received the food instrument at the local or state agency or through the mail and has signed the signature line may countersign the food instrument. Vendors shall assume full responsibility for food instruments not properly countersigned.

(d) North Carolina WIC food instruments shall be deposited at the vendor's bank. These food instruments shall not be assigned, transferred, sold or otherwise negotiated.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0704 VALIDITY OF WIC FOOD INSTRUMENTS

- (a) North Carolina WIC food instruments shall not be valid if:
- (1) the instrument has not been legibly imprinted with an authorized WIC vendor stamp;
 - (2) the instrument has been counterfeited or the signature forged;
 - (3) the instrument has been mutilated, defaced or otherwise tampered with or altered;
 - (4) the instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument;
 - ~~(5) the "pay exactly" amount exceeds the "void if exceeds amount";~~
 - (5) the "pay exactly" amount (i.e. purchase price) is not recorded on the food instrument;
 - (6) the "pay exactly" amount (i.e. purchase price) exceeds the maximum price set by the state agency for the food instrument;
 - ~~(6)(7)~~ the signature and countersignature do not match or the countersignature is missing;
 - ~~(7)(8)~~ the "date ~~redeemed-transacted~~" entered on the instrument is not on or between the "date of issue" and "participant must use by" dates assigned to the instrument;
 - ~~(8)(9)~~ the instrument is not completed in indelible ink.

Invalid food instruments will be stamped with the reason for invalidity and returned to the vendor without payment. A vendor may attempt to justify or correct an invalid food instrument and will receive payment if the agency is satisfied with the justification or correction.

- (b) A local WIC agency may revalidate invalid food instruments when:
- (1) the "pay exactly" amount has been altered and the vendor provides a receipt ~~or WIC Price~~

~~List~~ that confirms the altered amount is the correct "pay exactly" amount; or

~~(2) the "pay exactly" amount is greater than the "void if exceeds" amount and the vendor provides a receipt or WIC Price List that shows the prices used to determine the "pay exactly" amount were based on the vendor's actual prices;~~

~~(3)(2)~~ the food instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument and the State WIC office gives approval to the local WIC agency to revalidate.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. July 1, 1989; July 1, 1985; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0706 AUTHORIZED WIC VENDORS

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

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

Peer Group I - - zero to two cash registers;

Peer Group II - - three to five cash registers; and

Peer Group III - - six or more cash registers;

(2) Authorized vendors for which annual WIC supplemental food sales is available, and chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, will be placed into peer groups as follows, except as provided in Subparagraph (a)(6) of this Rule.

Peer Group I - - two thousand dollars (\$2,000) to one hundred thousand dollars (\$100,000) annually in WIC supplemental food sales at the store;

Peer Group II - - greater than one hundred thousand dollars (\$100,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

Peer Group III - - greater than three hundred thousand dollars (\$300,000)

but not exceeding five hundred thousand dollars (\$500,000) annually in WIC supplemental food sales at the store;

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement) and stores exceeding five hundred thousand dollars (\$500,000) annually in WIC supplemental food sales;

Peer Group V - - military commissaries; and

Peer Group VI - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

~~(3)~~ Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.

~~(4)~~ In determining a vendor's peer group designation based on annual WIC supplemental food sales, the state agency will look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data begins more than one year prior to the time of designation, the peer group designation will be based on the number of cash registers in the store.

~~(5)~~ The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

~~(6)~~ A vendor applicant that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program will be placed into the peer group the store was in at the time of the nonrenewal, termination or disqualification, provided that no more than one year has passed since the nonrenewal, termination or disqualification. All other vendor applicants will be placed into peer groups in accordance with Subparagraphs (a)(1) and (a)(2) of this Rule.

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

(1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;

(2) At the time of application and throughout the term of authorization, ~~Submit~~ submit all completed forms to the local WIC program,

except that a corporate ~~WIC Vendor with 20 or more WIC stores~~ entity operating under a WIC corporate agreement shall submit one completed WIC ~~Vendor Agreement corporate agreement~~ and ~~the~~ WIC Price-~~List Lists~~ to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;

(3) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(3)(B) of this Rule;

(A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group will be used to determine the maximum price for each supplemental food. The maximum price will be based on the average of the current highest shelf price for each supplemental food within a vendor peer group, plus a factor to reflect fluctuations in wholesale prices. The state agency will reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency will use the WIC Price Lists which must be submitted by all vendors by January 1 and July 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two price assessments will be based on WIC Price Lists requested from a sample of vendors within each peer group in March and September of each year.

(B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant will be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant will be deemed to have met the requirements of Subparagraph (b)(3) of this Rule. If any of the vendor

applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application will be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization;

~~(3)(4)~~ Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph ~~(b)(15)~~ ~~(c)(24)~~ of this ~~Rule;Rule.~~ ~~an~~ A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 ~~days;~~ ~~days.~~ If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;

~~(4)(5)~~ Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that ~~the~~ applicant's employees receive instruction in WIC program procedures and requirements;

(6) Mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case at all times;

~~(5)(7)~~ The ~~applicant's vendor site store~~ shall be located at a permanent and fixed location within the State of North Carolina. The ~~vendor site store~~ shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC ~~participant, parent, guardian or proxy; customer;~~

~~(6)(8)~~ The ~~applicant's vendor site store~~ shall be open throughout the year for business with the public at least ~~five-six~~ days a week for a minimum of ~~four hours per day~~ 40 hours per week between 8:00 a.m. and 11:00 p.m.;

~~(7)(9)~~ ~~An~~ A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local agency;

~~(8)~~ A vendor site for which the applicant is applying shall not have an owner with 25-percent or more financial interest who has committed a misdemeanor involving fraud, misuse or theft of state or federal funds or any felony;

~~(9)(10)~~ ~~An~~ The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.

~~An~~ A vendor applicant shall not have an employee who handles, ~~transacts, redeems,~~ deposits, ~~or~~ stores ~~or processes~~ WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts ~~business, business;~~ For purposes of this Subparagraph, the term "applicant" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity;

(11) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, but not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice;

(12) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;

~~(10)~~(13) An applicant shall not hold 25 percent or more. A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

(A) ~~any~~ a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or

(B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph ~~(j)~~, ~~(k)~~, or Paragraph ~~(k)~~ (l) of this Rule as the result of violation of Paragraphs ~~(f)~~, ~~(g)~~, ~~(g)(1)(A)~~, ~~(h)(1)(A)~~, ~~(g)(1)(B)~~, ~~(h)(1)(B)~~, ~~(g)(1)(C)~~ (h)(1)(C), (h)(1)(D) or ~~(g)(2)(D)~~ (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have

run, had a penalty not been assessed, is continuing.

~~The requirement~~ requirements of ~~this provision~~ Subparagraph (b)(13) shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of Subparagraph (b)(13) shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Subparagraph (b)(13)(A) prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph will apply until the time the Food Stamp vendor disqualification otherwise would have expired;

~~(14)~~ A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and

~~(14)~~(15) ~~An~~ A vendor applicant shall not become authorized as a WIC vendor if the ~~vendor site for which the applicant is applying~~ store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

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

(1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;

(2) Accept WIC program food instruments in ~~consideration~~ exchange for ~~the purchase of~~ WIC supplemental ~~food~~ items; Supplemental ~~food items~~ foods are those ~~food items~~ foods which satisfy the requirements of 15A NCAC 21D .0501. The ~~food items,~~ foods, specifications and product identification are described in the WIC Vendor Manual;

(3) Provide only the authorized supplemental ~~foods~~ food items as specified listed on the food instrument, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature ~~by the participant, parent, guardian, proxy or compliance investigator;~~ of the WIC customer; The WIC customer is not required to get all of the supplemental foods listed on the food instrument;

(4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food ~~items~~ actually provided and shall not charge or collect sales taxes for the supplemental food ~~items~~ provided;

TEMPORARY RULES

- ~~(5)~~ Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- ~~(6)~~ Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument will be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(3)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price will be invalid and returned to the vendor. The vendor may receive a replacement food instrument through the local agency for up to the maximum price set by the state agency for that food instrument;
- ~~(7)~~ Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(3)(A) of this Rule for each supplemental food within the vendor's peer group;
- ~~(8)~~ For exempt infant formulas and WIC-eligible medical foods, accept payment from the state WIC Program only up to the maximum price established by the state agency using the Medicaid Durable Medical Equipment Fee Schedule published by the North Carolina Division of Medical Assistance;
- ~~(9)~~ For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(3)(A) of this Rule for the vendor's peer group;
- ~~(10)~~ For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
- ~~(11)~~ Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- ~~(5)(12)~~ Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- ~~(6)(13)~~ Prior to obtaining the countersignature, enter in the "Date Redeemed-Transacted" box the month, day and year the WIC food instrument is accepted in consideration exchanged for the purchase of supplemental food items; food;

- ~~(14)~~ Ensure that the food instrument is countersigned in the presence of the cashier;
- ~~(7)(15)~~ Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
- ~~(8)(16)~~ Not redeem-transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
- ~~(17)~~ Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- ~~(9)(18)~~ Clearly imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
- ~~(40)(19)~~ Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- ~~(44)(20)~~ Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- ~~(42)(21)~~ Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- ~~(43)(22)~~ Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- ~~(44)(23)~~ Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
- ~~(45)(24)~~ Maintain a minimum inventory of supplemental food items in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental food items for stores classified 1-4: foods for vendors in Peer Groups I through III of Subparagraph (a)(1) and vendors in Peer Groups I through V of Subparagraph (a)(2) of this Rule;

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon and half gallon	Total of 6 gallons fluid milk

TEMPORARY RULES

	-and-	
	Skim/lowfat fluid: gallon or half-gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 oz. can	5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices		
	Frozen: 11.5-12 oz. container	10 containers
	Single strength: 46oz container	10 containers
	Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	
Dried Peas and Beans	2 varieties: one pound package	3 packages
or		
Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container	3 containers
Infant Cereal	Plain-no fruit added: 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 can combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen 14.5-16 oz. size	2 packages/cans
	All vendors (classifications 1 through 5) in Peer Groups I through III of Subparagraph (a)(1) and in Peer Groups I through VI of Subparagraph (a)(2) of this Rule shall supply milk, soy based, or lactose-free infant formula in 32 oz. ready-to-feed or powder upon <u>within</u> <u>48 hours of</u> request of by the state or local agency;	(18)(27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
(16)(25)	Ensure that all supplemental foods food items in the store for purchase are within the manufacturer's expiration date;	(19)(28) Inform and train vendor's employees in WIC procedures and regulations;
(17)(26)	Permit the purchase of supplemental food items without requiring other purchases;	(20)(29) Be accountable for <u>the</u> actions of vendor's its owners, officers, managers, agents, and employees in the processing of WIC food instruments and the provision of WIC supplemental food items; who commit vendor violations;
		(24)(30) Allow reasonable monitoring and inspection of the store premises and procedures to ensure

compliance with this agreement and state and federal WIC Program rules, regulations and policies. This includes, but shall not be limited to, allowance of access to all WIC food instruments at the store and vendor records pertinent to the purchase of WIC supplemental ~~foods, food items~~, vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC supplemental ~~foods, food items~~ purchased by the vendor, including ~~invoices—invoices, and~~ copies of purchase ~~orders; orders, and any other proofs of purchase.~~ These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records, or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;

- ~~(22)~~(31) Submit a current accurately completed WIC Price List ~~to the local agency~~ when signing this agreement, and by January 1 and July 1 of each year. The ~~applicant-vendor~~ also agrees to submit a WIC Price List within one week of any written request by the state or local ~~agency; agency.~~ Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- ~~(23)~~(32) Reimburse the state agency within 30 days of written notification ~~for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth in the WIC Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the authorized WIC vendor stamp;~~ of a claim assessed due to a vendor violation that affects payment to the vendor. The state agency has the authority to deny payment or assess a claim in the amount of the full purchase price of each food instrument affected by the vendor violation. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor will also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s).
- ~~(24)~~(33) Not seek restitution from the ~~participant, parent, guardian or proxy—WIC customer~~ for ~~reimbursements paid—reimbursement paid by the vendor~~ to the state agency or for WIC food instruments not paid ~~or partially paid~~ by the state ~~agency; agency.~~ Additionally, the vendor

may not charge the WIC customer for authorized supplemental foods obtained with food instruments;

- ~~(25)~~(34) Not contact a ~~participant, parent, guardian, or proxy—WIC customer~~ outside the store regarding the ~~transaction or~~ redemption of WIC food instruments;
- ~~(26)~~(35) Notify the local agency ~~and return the authorized WIC vendor stamp to the local agency in writing at least 30 days prior to when the vendor ceases operations or the ownership changes a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program and disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency.~~ Change of ownership, change in location, ceasing vendor operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not terminate a disqualification period applicable to the vendor site; store.
- ~~(27)~~(36) Return the authorized WIC vendor stamp to the local agency upon termination of this agreement or disqualification from the WIC Program;
- ~~(28)~~(37) Offer WIC ~~participants—customers~~ the same courtesies as offered to other customers; ~~and~~
- ~~(38)~~ The WIC Vendor Agreement does not constitute a license or a property interest. A vendor must reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant will be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- ~~(29)~~(39) Comply with all the requirements for ~~vendor applicants of Subparagraphs (a)(5) through (9) (b)(3) and (b)(6) through (b)(14) of this Rule throughout the term of authorization.~~ authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(11) or (b)(13) during the vendor's period of authorization, and sanction and/or terminate the Agreement of any vendor that fails to comply with Subparagraphs (b)(6), (b)(9), (b)(12) or (b)(14) during the vendor's period of authorization.

TEMPORARY RULES

(e)(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;
(2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of 50 percent-one-third of all authorized vendors shall be monitored within a state fiscal year (July 1 through June 30) and all vendors shall be monitored at least once within two-three consecutive state fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
(3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
(4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
(5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

(d)(e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

(e)(f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(g) Title 7 C.F.R. 246.12(1)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.

- (1) In accordance with 7 CFR 246.12(1)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
(2) A pattern, as referenced in 7 C.F.R. 246.12(1)(1)(iii)(B) through (F) and 246.12(1)(2)(iv), shall be established as follows:
(A) two occurrences of claiming reimbursement for the sale of an amount of a specific supplemental food item over a 60-day period which exceeds the store's documented inventory of that supplemental food item within a 12-month period; by 10 percent or more. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(1)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
(B) two occurrences of charging participants more for supplemental

food than non-WIC customers or charging participants more than the current shelf or contract price vendor overcharging within a 12-month period;

- (C) two occurrences of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an authorized-unauthorized vendor and/or an unauthorized person within a 12-month period;
(D) two occurrences of charging for supplemental food not received by the participant-WIC customer within a 12-month period;
(E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
(F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

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

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
(A) 90 days for each occurrence of failure to properly redeem-transact a WIC food instrument by not completing the date and purchase price on the WIC food instrument before obtaining the countersignature countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
(B) 60 days for each occurrence of requiring a cash purchase to redeem-transact a WIC food instrument;
(C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC

- supplemental food brand is ~~available.~~
~~available; and~~
- (D) ~~30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule.~~
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as ~~follows:~~ follows for each occurrence:
- (A) 2.5 points for stocking WIC supplemental foods outside of the manufacturer's expiration date.
- (B) 5 points for:
- (i) failure to attend annual vendor training;
- ~~(ii) failure to submit a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency; and~~
- ~~(iii)(ii)~~ (ii) failure to stock minimum inventory; inventory; and
- ~~(iii)~~ (iii) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case.
- (C) 7.5 points for:
- (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); and
- (ii) contacting a WIC ~~participant, parent, guardian, or proxy customer~~ in an attempt to recoup funds for food instrument(s) or contacting a WIC ~~participant, parent, guardian, or proxy customer~~ outside the store regarding the transaction or redemption of WIC food instruments.
- (D) 15 points for:
- (i) failure to allow monitoring of a store by WIC staff when required;
- (ii) failure to provide WIC food instrument(s) for review when requested;
- (iii) failure to provide store inventory records when requested by WIC ~~staff;~~ staff, except as provided in Subparagraph (c)(30) and Part (g)(2)(A) of this Rule for failure or inability to
- provide records for an inventory audit;
- (iv) nonpayment of a claim made by the State agency; and
- (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring ~~forms).~~ forms), except as provided in Subparagraph (c)(30) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit.
- (3) For the violations listed in Subparagraph ~~(g)(2)~~ (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph ~~(g)(2)~~ (h)(2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. 18 days shall be added to the disqualification period for each point over 15 points.
- ~~(h)(i)~~ For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
- (A) buying or selling food instruments for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
- (D) ~~charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price; vendor overcharging;~~
- (E) receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
- (F) charging for supplemental food not received by the ~~participant;~~ WIC customer;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash,

TEMPORARY RULES

- firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly ~~redeem-transact~~ a WIC food instrument;
 - (J) requiring a cash purchase to ~~redeem transact~~ a WIC food instrument; or
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available;
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
- (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instrument(s) for review when requested;
 - (E) failure to provide store inventory records when requested by WIC staff; or
 - ~~(F) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or~~
 - ~~(F) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case;~~
- (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
 - (B) failure to submit ~~a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency; a WIC Price List as required by Subparagraph (c)(31) of this Rule;~~
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC ~~participant, parent, guardian or proxy customer~~ in an attempt to recoup funds or food instrument(s) or contacting a WIC ~~participant, parent, guardian, or proxy~~

- ~~customer~~ outside the store regarding the ~~transaction or~~ redemption of WIC food instruments;
- (E) nonpayment of a claim made by the State agency;
- (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring ~~forms~~); or
- ~~(G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit.~~

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

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

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

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The State agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph ~~(g)~~ (h) of this Rule when the State agency determines that disqualification of a vendor would result in undue participant hardship in accordance with Subparagraph ~~(k)(3)~~ (l)(3) of this Rule.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph ~~(g)~~(h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:

TEMPORARY RULES

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

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

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

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

~~(o)~~ The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph ~~(b)(23)~~ (c)(32) of this Rule.

~~(p)~~ In accordance with 7 C.F.R. 246.12(l)(7) and 246.12(u)(5), North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this ~~contract agreement~~. Nonrenewal of a vendor ~~contract agreement~~ is not an appealable action. If ~~a contract an agreement~~ is not renewed, the ~~person-store~~ may reapply and if denied, may appeal the denial.

~~(q)~~ Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment ~~to a non-authorized store~~ for WIC food instruments accepted by ~~a non-authorized WIC vendor, the store, a current WIC vendor an~~ agreement ~~for a one-time payment~~ need only be signed by the ~~vendor-store manager~~ and the state agency. The ~~vendor-store~~ may request such one-time payment directly from the state agency. The ~~vendor-store manager~~ shall sign ~~a statement an agreement~~ indicating that ~~he the store~~ has provided foods as prescribed on the food instrument, charged current shelf prices ~~or less than current shelf prices, not charged sales tax~~, and verified the identity of the ~~participant-WIC customer~~. ~~For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency.~~ Any ~~WIC vendor~~ agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. ~~After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further~~

one-time payment agreements for WIC food instruments accepted thereafter.

~~(r)~~ Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor ~~appeals~~ appeal procedure procedures shall be in accordance with 15A NCAC 21D .0800.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. May 17, 2000; Temporary Amendment Eff. June 23, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002.

SECTION .0800 – WIC PROGRAM ADMINIS TRATIVE APPEALS

15A NCAC 21D .0802 APPEALS

(a) The appeal provisions for vendors and local agencies found in 7 C.F.R. ~~246.18(a)–246.18(a),and~~ (b)(1) ~~and (b)(9)~~ are incorporated by reference with all subsequent amendments and editions. The appeal procedures in 7 C.F.R. 246.18(b)(1) and (b)(9) shall apply to the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).

(b) All administrative appeals under this Section shall be made in accordance with G.S. 150B and G.S. 130A-24.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 USC 1786; Eff. July 1, 1981; Amended Eff. July 1, 1987; July 1, 1986; July 1, 1983; July 1, 1982; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0804 CONTINUATION OF PARTICIPATION

Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and 246.18(a)(3)(iii), the participation of a local WIC agency or authorized WIC vendor in the WIC program ~~shall may~~ continue during ~~an administrative appeal the appeal procedure if the decision being appealed is a decision by a local WIC agency or the state agency to suspend or terminate participation during the contract period.~~ Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and 246.18(a)(3)(iii), the adverse action shall become effective upon issuance of a final agency decision pursuant to G.S. 150B-36 which upholds the adverse action.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.18; Eff. July 1, 1981; Amended Eff. July 1, 1986; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0805 DECISION

~~The final decision rendered in an administrative appeal held in accordance with this Section shall be sent to all parties to the appeal within 60 days of the hearing request.~~

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.18; Eff. July 1, 1981; Amended Eff. July 1, 1982; Temporary Repeal Eff. July 1, 2002.

15A NCAC 21D .0806 CONTINUING RESPONSIBILITIES

An appeal shall not relieve the local agency or ~~food~~ authorized WIC vendor that is permitted to continue Program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the state or local ~~agency.~~ agency and WIC Program rules, regulations, and law.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.18; Eff. July 1, 1981; Temporary Amendment Eff. July 1, 2002.

SECTION .0900 – WIC PROGRAM PARTICIPANT FAIR HEARINGS

15A NCAC 21D .0902 GENERAL CONDITIONS

(a) This Section shall be carried out in accordance with 7 C.F.R. 246.9 and G.S. 150B-22. The fair hearing procedures set out in this Section establish an informal dispute resolution process which must be complied with prior to making a formal appeal in accordance with G.S. 150B.

(b) For the purposes of this Section, agency official shall mean the ~~section chief~~ Branch Head of the Nutrition Services ~~Section Branch~~ or his or her designee.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1987; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0903 AVAILABILITY

~~Every current or potential WIC participant or their parent, guardian or any other person acting on their behalf may appeal any decision of ineligibility, termination or suspension from the program made by the local WIC agency.~~ Any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued Program benefits or results in the individual's denial of participation or disqualification from the WIC Program by requesting a fair hearing.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0904 NOTIFICATION OF THE RIGHT TO A FAIR HEARING

(a) Every current or potential WIC participant shall be informed by the local WIC agency of their right to a fair hearing:

- (1) in writing at the time of application;
- (2) in writing whenever they are determined ineligible;
- (3) in writing if ~~suspended~~ disqualified due to abuse of the program;
- ~~(4)~~ (4)(5) in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits; and
- ~~(4)(5)~~ orally or in writing at least 15 days before the expiration of each certification period.

(b) Content of notification of fair hearings shall include:

- (1) a statement of the right to a fair hearing;
- (2) the method by which a fair hearing may be requested, including the time limit; and
- (3) who may represent the individual.

(c) Written documentation of all notification of the right to a fair hearing shall be recorded on the North Carolina Application for the Special Supplemental ~~Food~~ Nutrition Program for Women, Infants and Children (DEHNR Form 2767).

(d) In order to notify current and potential participants of the fair hearing process, a simplified summary of the steps involved in obtaining a fair hearing shall be posted in a visible place at every WIC site where certifications are performed, food instruments are issued or applications are accepted. This notification shall contain:

- (1) notice of right to a fair hearing;
- (2) a simplified explanation of the definition and purpose of a fair hearing;
- (3) the method by which a fair hearing may be requested, including the time limit; and
- (4) who may represent the individual at the fair hearing and in requesting a fair hearing.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0905 REQUEST FOR A FAIR HEARING

(a) A request for a fair hearing is any clear expression of desire to present a case contesting ~~a decision or an~~ action which results in an individual's denial of ~~participation, suspension, or termination~~ participation or disqualification from the program. ~~program or a claim against an individual for repayment of the cash value of improperly issued Program benefits.~~ This request may be made to any of the following:

- (1) the agency official;
- (2) the agency director of the local WIC agency;
- (3) the WIC director of the local WIC agency; or
- (4) any person serving in one of the above three roles in the absence of the agency official, agency director or WIC director.

(b) If the request is not made directly to the agency official, the individual receiving the request shall immediately notify the agency official of the request by telephone.

- (c) All requests shall be documented in writing.
- (1) If the original request is made in writing, the individual receiving the request shall retain a photocopy and send the original to the agency official immediately following the telephone call.
 - (2) If a verbal request is received, the individual receiving the request shall document the request in writing, including as a minimum:
 - (A) the applicant's or participant's name;
 - (B) the name of the individual making the request:
 - (i) their mailing address,
 - (ii) telephone number, and
 - (iii) relation to the applicant or participant;
 - (C) the date of the request; and
 - (D) the cause for the request along with the name, title, and signature of the person writing the documentation.

The original copy of this documentation shall be sent to the agency official immediately following the telephone call with a copy being retained by the sender.

- (d) The request for a fair hearing may be made by the individual affected by the ~~decision or~~ action or the individual's parent, guardian, caretaker, or any other person acting on their behalf.
- (e) If ~~a participant or the participant's~~ an individual or an individual's parent, guardian, caretaker, or any other person acting on their behalf ~~express~~ expresses verbally the desire for a fair hearing to a state or local agency staff member not authorized to accept a request, that staff member shall provide assistance in contacting the individuals who can accept a fair hearing request.
- (f) The request for a fair hearing must be made within 60 days from the date the applicant or participant is given notice of the action. If the notification is mailed, this time period shall begin on the date the notification was mailed.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0906 DENIAL OR DISMISSAL OF A REQUEST

Denial or dismissal of hearing may be made if:

- (1) the request is not received within 60 days of the date of notification of the action;
- (2) the request is withdrawn in writing by the appellant or their representative;
- (3) the request is verbally withdrawn by the appellant or the appellant's parent, guardian, caretaker, or any other person acting on their behalf during conversation with the agency official. Within 10 days of this verbal withdrawal request the agency official shall send a letter to the appellant and the local WIC agency summarizing the events which lead to the withdrawal of the request. This letter shall

- (4) include notification of the appellant's right to reinstate the request for a fair hearing;
- (5) the appellant or the appellant's parent, guardian, caretaker, or any other person acting on their behalf fails to appear at the scheduled hearing;
- (6) the request is made in reference to the tailoring of the food package;
- (7) the initial ~~local agency decision of ineligibility, termination or suspension action assessing a claim for the cash value of improperly issued Program benefits or denying participation or disqualifying~~ from the program has been reversed by the local WIC agency or the state agency, resulting in the provision of program benefits to the appellant.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0907 CONTINUATION OF BENEFITS

- (a) WIC program benefits shall be continued during the appeal ~~procedure when a decision is appealed of the following actions when the request for a hearing is received~~ within 15 days of notification of the ~~following actions:~~ action:
 - (1) ~~suspension-disqualification~~ from the program for abuse during a certification period;
 - (2) determination of ineligibility during a certification period due to categorical ineligibility or residential ineligibility; or
 - (3) other terminations during a certification period.
- (b) WIC program benefits shall not be continued when a fair hearing is requested:
 - (1) in any of the situations in Paragraph (a) of this Rule if the request is made more than 15 days after the date of ~~notification-~~ notification; or
 - (2) by applicants who are denied benefits at the initial or subsequent determination of WIC eligibility if the previous certification period has expired.

- (c) When benefits are continued due to a request for a fair hearing as specified above, the individual shall continue to receive benefits until ~~the hearing is dismissed or~~ an adverse hearing decision is ~~reached-~~ reached or the certification period expires, whichever occurs first.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0908 NOTICE OF HEARING

- (a) The agency official shall notify the aggrieved party, the local WIC agency and the ~~nutrition and dietary services branch~~ Nutrition Services Branch in writing that a request for a hearing has been received and shall appoint a time, date, and place for the hearing within 10 days of receipt of the request.

- (b) Notice shall be given to all parties at least 10 days in advance of the hearing.
- (c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the time and place for the hearing is satisfactory. If a response is not received at least 24 hours prior to the time proposed for the hearing, it will be assumed that the time and place are satisfactory.
- (d) The notice shall contain:
- (1) a simplified explanation of the procedure for the hearing;
 - (2) a statement of the date, hour, place and nature of the hearing;
 - (3) a reference to the particular sections of the statutes and rules involved;
 - (4) a short and plain statement of the factual allegations.
- (e) If the aggrieved party indicates that he-she desires another time and date, the agency official shall consider the request and set a new time and date for the hearing. The hearing shall be accessible to the appellant.
- (f) The hearing shall be held within three weeks from the date of the receipt of the request.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0909 HEARING OFFICER

The Director of the Division of Maternal & Child Health Public Health shall designate a representative who did not participate in making the decision taking the action under appeal to be the hearing officer. The hearing officer shall:

- (1) preside over the informal proceeding;
- (2) ensure that all relevant issues are considered;
- (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from a source mutually satisfactory to all parties to the hearing; and
- (6) issue a decision to the agency official a proposal for decision, or, if authorized by the agency official and agreed to by the parties in writing or at the hearing, render a final decision which will resolve the dispute.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. July 1, 1995; July 1, 1987; Temporary Amendment Eff. July 1, 2002.

15A NCAC 21D .0910 HEARING PROCEDURE AND RIGHTS OF THE AGGRIEVED PARTY

- (a) Any party to the hearing may be assisted or represented by an attorney or other person.
- (b) Any party to the hearing may examine, prior to and during the hearing, the documents and records presented to support the decision action under appeal.
- (c) The hearing shall be open to the public, and the aggrieved party ~~or and~~ the state and local agency may have witnesses.
- (d) Any party to the hearing may present any oral or documentary evidence and arguments.
- (e) Any party to the hearing may question or refute any testimony or other evidence.
- (f) Any party to the hearing may submit evidence to establish pertinent facts and circumstances in the case.
- (g) ~~Participants~~ The appellant or his or her representative shall have the right to request a continuance if ~~they notify the appellant or representative notifies~~ the hearing officer by telephone or in writing at least 48 hours before the original hearing date. If the ~~participant appellant or representative~~ fails to attend the scheduled hearing or fails to request a continuance from the hearing officer by telephone or in writing at least 48 hours before the original hearing date, the ~~participant appellant~~ waives any right to a hearing and the original decision action of the agency shall become final.

History Note: Authority G.S. 130A-361; 150B-22; 42 U.S.C. 1786; 7 C.F.R. 246.9; Eff. July 1, 1981; Amended Eff. July 1, 1987; October 1, 1985; Temporary Amendment Eff. July 1 2002.

15A NCAC 21D .0911 DECISION

- (a) The fair hearing decision shall be made by the agency hearing official and shall be based only on the oral and documentary evidence presented at the hearing and applicable state statutes, federal laws, regulations or policy and shall be made a part of the hearing record by the hearing officer.
- (b) The agency hearing official shall notify in writing the aggrieved party, any designated representative of the aggrieved party, the local WIC agency and the Nutrition Services Section Branch of the decision within 45 days from the date of the request for the hearing.
- (c) If the decision is in favor of the aggrieved party and benefits were denied or discontinued, benefits shall begin within ~~the above mentioned 45 day period. two business days after issuance of the decision.~~
- (d) If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.
- (e) The hearing officer shall prepare a recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing which, together with all papers and requests filed in the proceeding and the written fair hearing decision decision, shall constitute the exclusive hearing record.
- (f) The decision shall be binding on the local WIC agency.
- (g) All hearing records shall be retained for five three years.
- (h) Upon request by any member of the public a copy of all hearing records and decisions in a form that does not identify individuals (appellant or local agency) shall be prepared by the ~~nutrition and dietary services branch~~ Nutrition Services Branch and be available for inspection and copying.

History Note: Authority G.S. 130A-361; 150B-22;
 42 U.S.C. 1786; 7 C.F.R. 246.9;
 Eff. July 1, 1981;
 Amended Eff. December 6, 1991;
Temporary Amendment Eff. July 1, 2002.

TITLE 18 – SECRETARY OF STATE

Rule-making Agency: *NC Department of the Secretary of State*

Rule Citation: *18 NCAC 06 .1104, .1205-.1206, .1208, .1213, .1308, .1319-.1320, .1501*

Effective Date: *April 1, 2002*

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

Authority for the rulemaking: *S.L. 2001-436; s.s. 7, 8, 10, 11*

Reason for Proposed Action: *The 2001 General Assembly, in S.L. 2001-436, passed an act (in accordance with model legislation from the National Association of Insurance Commissioners) making revisions to North Carolina's insurance and securities laws regulating viatical settlement contracts. The amendments to the securities laws provisions are found in S.L. 2001-436, s.s. 6-14 and amend G.S. 78A, the North Carolina Securities Act. These provisions become effective April 1, 2002. Sections 7, 8, 10, 11 of S.L. 2001-436 directs the Administrator to adopt conditions governing the offer and sales of any viatical settlement contract or any fractionalized or pooled interest therein. Since the offer and sales of viatical settlement contracts are currently taking place in North Carolina, it is necessary for investor protection for the Administrator to adopt rules governing advertising, suitability standards, financial statements, in investor's right of rescission, and the disclosure of information to offerees and purchasers.*

Comment Procedures: *Comments concerning these temporary rules may be addressed to David S. Massey, Deputy Securities Administrator, NC Secretary of State, Securities Division, 300 N. Salisbury Street, Suite 100, Raleigh, NC 27606. Telephone (919) 733-3924.*

CHAPTER 06 – SECURITIES DIVISION

SECTION .1100 – GENERAL PROVISIONS

18 NCAC 06 .1104 DEFINITIONS

As used in this Chapter, the following terms mean:

- (1) "Act" shall mean the North Carolina Securities Act, Chapter 78A of the North Carolina General Statutes, as same has been or may be from time to time amended.
- (2) "Commercial Paper," as referred to in G.S. 78A-16(10), shall mean any note, draft, bill of exchange or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months,

exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited or any guarantee of such paper or of any such renewal. Commercial paper shall also exemplify the following characteristics:

- (a) prime quality negotiable paper of a type not ordinarily purchased by the general public;
 - (b) issued to facilitate well recognized types of current operational business requirements; and
 - (c) of a type eligible for discounting by Federal Reserve Banks.
- (3) "Direct Participation Program" shall mean a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein and in any rules adopted pursuant hereto the term shall include each of the separate entities or programs making up the overall program and the overall program itself. Excluded from this definition are viatical settlement contracts as defined in G.S. 78A-2(13). Subchapter S corporate offerings, real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403 (a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, and any company registered pursuant to the Investment Company Act of 1940.
- (4) "SEC" shall mean the Securities and Exchange Commission.
- (5) "NASD" shall mean the National Association of Securities Dealers, Inc.
- (6) "NASAA" shall mean the North American Securities Administrators Association, Inc.
- (7) "CRD" shall mean the Central Registration Depository.
- (8) "Investment Contract" as used in G.S. 78A-2(11) includes:
- (a) Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this Subparagraph a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of a third party; and

- (b) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of this initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.
- (9) "Recognized Securities Manual" shall mean a publication which contains the information required by G.S. 78A-17(2)a. and which has been designated, pursuant to G.S. 78A-49, as a "recognized securities manual" by the administrator.
- (10) "Form D" shall mean the document adopted by the Securities and Exchange Commission, in effect on September 1, 1996 and as may be amended by the SEC from time to time, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a direct participation program security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933, as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), or any person relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a viatical settlement contract, shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all sales of direct participation program securities, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales of viatical settlement contracts, the provisions of Rule .1320 of this Chapter shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter.
- (4) Not less than 10 business days prior to any sale of the securities to a resident of this State which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed:
 - (A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:
 - (i) identifying the issuer (including name, form of organization, address and telephone number);
 - (ii) identifying the person(s) who will be selling the securities in this State (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the

History Note: Authority G.S. 78A-49(a); Eff. April 1, 1981; Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. April 1, 2002.

SECTION .1200 - EXEMPTIONS

18 NCAC 06 .1205 LIMITED OFFERINGS PURSUANT TO G.S. 78A-17(9)

(a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of Rule .1208 of this Section shall not be ~~required~~required, except in the case of the offer and sale of a viatical settlement contract, if the security is offered to not more than five individuals who reside in this State.

TEMPORARY RULES

- (iii) requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;
- (iii) containing a summary of the proposed offering including:
 - (I) a description of the securities to be sold;
 - (II) the name(s) of all general partners of an issuer which is a partnership and, with respect to a corporate issuer or any corporate general partner(s) of any issuer which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);
 - (III) the anticipated aggregate dollar amount of the offering;
 - (IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
 - (V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and
 - (VI) a list of the states in which the securities are proposed to be sold;
- (iv) containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b); ~~and~~
- (v) in the case of a direct participation program security, containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or

materials used or proposed to be used in connection with the offer and sale of the ~~securities-securities; and~~

(vi) in the case of a viatical settlement contract, the filing shall include a copy of all written documents or materials, including advertising, used or proposed to be used in connection with the offer and sale of the securities.

- (B) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;
- (C) A non-refundable filing fee in the amount of twenty-five dollars (\$25.00), payable to the North Carolina Secretary of State.

(5) In the case of offers of viatical settlement contracts, the persons offering the security shall deliver to the offeree written materials complying with G.S. 78A-13. Additionally, any materials used in the offering of the security shall comply with G.S. 78A-14 and shall provide each offeree written notice of his or her rights under G.S. 78A-56 and under Rule .1501 of this Chapter.

(6) Compliance with the provisions of Subparagraph (4) of this Rule shall not be required if the security is offered to not more than five individuals who reside in this State, State, except in the case of the offer and sale of a viatical settlement contract.

(c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

(d) The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by G.S. 78A-17(9).

History Note: Authority G.S. 78A-17(9); 78A-49(a); S.L. 2001, c. 436, s. 7, 10, 11; Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984; Amended Eff. October 1, 1988; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. April 1, 2002.

18 NCAC 06 .1206 LIMITED OFFERING

EXEMPTION PURSUANT TO G.S. 78A-17(17)

(a) Transactions made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) and (and as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

(b) No exemption under this Rule .1206 is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification. For purposes of this Rule .1206, "good cause" means a substantial reason amounting in law to a legal excuse for noncompliance with a restriction imposed by Rule .1207, and shall be relevant to considerations of the public interest, the protection of the investing public, the age and nature of the particular disqualifying event, the business experience, qualifications, and disciplinary history of the disqualified person, the need for full disclosure of information relevant to investment decisions, and the burden and cost of compliance with regulatory requirements applicable to the transaction in the absence of the availability of the exemption.

(c) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule .1206 unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(d) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that ~~one of~~ the following conditions ~~is~~ are satisfied:

(1) In the case of a security other than a viatical settlement contract:

~~(A)~~ (A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is ~~suitable~~ suitable; or

~~(B)~~ (B) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of

evaluating the merits and risks of the prospective investments.

(2) In the case of a viatical settlement contract, the requirements of Rule .1320 of this Chapter.

(e) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule .1206, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be ~~applicable~~ applicable in addition to all other requirements of this Rule .1206. In all sales pursuant to the exemption provided by this Rule .1206 of viatical settlement contracts, the provisions of Rule .1320 of this Chapter shall be applicable.

(f) Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter and, in the case of a viatical settlement contract, shall set forth the purchaser's right of rescission pursuant to both G.S. 78A-56 and Rule .1501 of this Chapter.

(g) Nothing in the exemption provided by this Rule .1206 is intended to or shall be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(h) Transactions which are exempt under this Rule may not be combined with offers and sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(i) A failure to comply with a term, condition or requirement of Paragraphs (c) and (d) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

- (1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
- (2) the failure to comply was insignificant with respect to the offering as a whole; and
- (3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Paragraphs (c) and (d) of this Rule.

Where an exemption is established only through reliance upon this Paragraph (i) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.

(j) In any proceeding involving this Rule .1206, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(k) In view of the objective of this Rule .1206 and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule .1206, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule .1206 or Rules .1207 and .1208 of this Section. The administrator may, by order, waive any

condition of or limitation upon the availability of the exemption provided by this Rule .1206.

(l) In determining whether to waive a condition of or limitation on the availability of the exemption provided by this Rule .1206, the Administrator shall consider matters and information relevant to the public policy intended by G.S. 78A, which is the protection of the investing public from persons effecting securities transactions by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or misleading omission of material fact, and engaging in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person. Such considerations shall include, but not be limited to the following:

- (1) the need for full and adequate disclosure of information relevant to investment decisions;
- (2) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (3) the experience, suitability, character, expertise, and financial strength of the offerers in the particular transaction;
- (4) the costs of compliance with applicable regulatory requirements;
- (5) the benefits to the particular investors and to the general investing public of compliance with applicable regulatory requirements;
- (6) the terms, conditions, and provisions of the particular securities transaction; and
- (7) any other factors which are relevant to the protection of the investing public.

(m) The exemption provided by this Rule .1206 shall be known and may be cited as the "North Carolina Limited Offering Exemption."

(n) Pursuant to G.S. 78A-18, the administrator may by order deny or revoke the exemption provided by this Rule .1206 with respect to a specific security or security transaction.

History Note: Authority G.S. 78A-17(17); 78A-49(a); S.L. 2001, c.436, s.10, 11; Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. October 1, 1997; Amended Eff. October 1, 2000; August 1, 1998; Temporary Amendment Eff. April 1, 2002.

18 NCAC 06 .1208 TRANSACTIONS EXEMPT UNDER RULE .1206: FILING REQUIREMENTS

(a) Not less than 10 business days prior to any sale of a security sold in reliance upon the exemption provided by Rule .1206 of this Section which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following:

- (1) A Form D (Notice of Sales of Securities Pursuant to Regulation D...and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D is to be signed by a

person duly authorized to do so by the issuer, and shall be attached to a statement containing the supplemental information required by Paragraph (c) of this Rule .1208.

- (2) A copy of any written document or materials proposed to be used in connection with the offer and sale of the securities to be sold; provided, however, if any such documents or materials are not available to be filed 10 business days prior to any sale of the securities to a person who resides in this State, they shall be filed when available, but, in any event, no later than 5 business days before any such sale. Supplements or amendments to any such written document or materials shall be filed within 5 business days after delivery to any prospective purchaser of the securities. Notwithstanding the foregoing, any written materials, disclosures required by G.S. 78A-13, and advertising subject to G.S. 78A-14 proposed to be used in connection with the offer and sale of viatical settlement contracts shall be filed with the Administrator not later than 10 days before the first sale of such securities in this State, and any supplements to such materials shall be filed with the Administrator not later than 5 days prior to their delivery to any prospective purchaser.

- (3) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable.

- (4) A non-refundable filing fee in the amount of seventy-five dollars (\$75.00), payable to the North Carolina Secretary of State.

(b) The issuer shall promptly file or caused to be filed with the administrator any amended Form D filed with the U.S. Securities and Exchange Commission in connection with the transaction.

(c) To comply with Subparagraph (a)(1) of this Rule .1208, the issuer shall file with the administrator a statement signed by a person duly authorized to execute such statement on its behalf containing the following representations:

- (1) that the securities will be sold in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended;
- (2) that, to the best of the issuer's knowledge, the issuer is not disqualified by the provisions of Rule .1207 of this Section from relying upon the exemption provided by Rule .1206 of this Section;
- (3) that the issuer will furnish to the administrator, upon written request, evidence of compliance with ~~Subparagraphs (2), (3) and (4) of Rule .1206(a)~~ of this Section;
- (4) that all persons who will be selling the securities in this state are in compliance with

or exempt from the requirements of G.S. 78A-36; and

- (5) that the issuer will notify the administrator in writing of the names and titles of all officers, directors, partners, or employees of the issuer who will be engaged in the offer or sale of the securities in this state. Such notice to the administrator shall be made prior to any offer of securities in this state.

(d) Any filing pursuant to this Rule .1208 shall be amended by filing with the administrator such information and changes as may be necessary to correct any material misstatement or omission in the filing.

(e) The provisions of this Rule .1208 shall not apply to offers or sales of a security made pursuant to Rule .1206 of this Section if the security is offered to not more than five individuals who reside in this State-State, except for offers or sales of viatical settlement contracts.

History Note: Authority G. S. 78A-17(17); 78A-49(a); S.L. 2001, c. 436, s. 10; Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. April 1, 2002.

18 NCAC 06 .1213 TRANSACTIONAL EXEMPTION PURSUANT TO G.S. 78A-17(19)

Conditions of Eligibility for Exemption. For the purposes of eligibility for the exemption provided at G.S. 78A-17(19), an offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction must meet all of the following criteria:

- (1) Suitability Standards. Sales of viatical settlement contracts may be made only to purchasers meeting the requirements of Rule .1320 of this Chapter.
- (2) Purchase Not for Resale. Each purchaser must represent in writing that the purchaser is purchasing for investment and for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security.
- (3) Required Disclosures. The information set forth in G.S. 78A-13 and in Rule .1319 of this Chapter shall be disclosed in accordance with that Section.
- (4) Rescission by Purchaser. Each purchaser shall be provided with written notice of his or her rights of rescission as set forth in G.S. 78A-56 and in Rule .1501 of this Chapter.
- (5) Exemption Filing and Fee. A notice of the issuer's intent to sell securities in reliance on G.S. 78A-17(19), signed by the issuer or by a duly authorized officer of the issuer and notarized, shall be filed with the Administrator not later than 10 business days before any offers or sales of securities are made pursuant to G.S. 78A-17(19). Such notice shall include:

(a) The issuer's name, the issuer's type of business organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(b) A consent to service of process naming the Secretary of State as agent for service of process;

(c) Such financial statements as may be required to be disclosed under G.S. 78A-13;

(d) the names and CRD numbers, if any, of all persons who will be offering the securities for sale in or from the State of North Carolina; and

(e) an undertaking to notify the Administrator in writing of any material change or material omission in the information filed with the Administrator pursuant to Rule .1213 of this Chapter not later than five business days following the change or discovery of the omission.

(6) No Commissions to Unregistered Sellers. No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered salesman of a registered dealer.

(7) Filing of Advertising Materials. At least 10 days before use within this state, the issuer files with the Administrator all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state, including the written disclosures required by G.S. 78A-13 and by Rule .1319 of this Chapter.

(8) Legends Required. Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by Rule .1213 of this Chapter shall disclose conspicuously the appropriate legends:

(a) THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

(b) IN MAKING AN INVESTMENT DECISION INVESTORS MUST

RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; and

(c) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(d) The following devices or sales presentations, and the use thereof in any advertising shall be deceptive or misleading practices:

- (1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;
- (2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;
- (3) Statements or representations which predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities unless such statements or representations clearly indicate that they represent solely the opinion of the publisher thereof;
- (4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;
- (5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;
- (6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;
- (7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered; or
- (8) Other devices or sales presentations that are fraudulent or would tend to work a fraud under G.S. 78A-8 or 78A-10.

(e) The disseminator of the advertising shall be responsible for its accuracy, reliability and conformance with the Act and this Rule.

(f) The terms "prospectus, pamphlet, circular, form letter, advertisement, advertising or other sales literature", as used in G.S. 78A-27(b)(12) and those same terms plus the term

History Note: Authority S.L. 2001, c. 436, s. 7, 8, 10, 11; Temporary Adoption Eff. April 1, 2002.

SECTION .1300 – REGISTRATION OF SECURITIES

18 NCAC 06 .1308 ADVERTISING

(a) For the purposes of this Rule, "Advertising" shall mean any advertisement, display, pamphlet, brochure, letter, article or communication published in any newspaper, magazine or periodical, or script or any recording, radio or television announcement, broadcast or commercial to be used or circulated in connection with the sale and promotion of a public offering of securities.

(b) If advertising is required to be filed with the SEC or the NASD, and has been filed with these agencies in a timely manner, then no filing of this same advertising need be done with this division unless specifically requested by the administrator or otherwise required by statute, rule or order.

(c) Except where the conditions of G.S. 78A-2(2)d.3. or 78A-2(2)d.4. are met, all advertising circulated within this state for registered securities must carry the name of at least one North Carolina registered dealer which can legally make an offering of the securities in this state.

"advertising communication" used in G.S. 78A-49(d) shall not include a notice, circular, advertisement, letter or communication in respect of the security if it states from whom a written prospectus or offering circular may be obtained, and does no more than identify the security, the price thereof, and the name of one or more registered dealers through whom the security is available.

History Note: Authority G.S. 78A-8(2); 78A-49(a); Eff. April 1, 1981;
Amended Eff. October 1, 1988; January 1, 1984;
Temporary Amendment Eff. April 1, 2002.

**18 NCAC 06 .1319 REQUIRED DISCLOSURES :
VIATICAL SETTLEMENT CONTRACTS**

(a) Disclosures Prior to Payment of Consideration. On or before the date the viatical settlement purchaser remits consideration pursuant to the purchase agreement, the purchaser shall be provided with the following written disclosures in addition to any disclosures set forth in G.S. 78A-13:

- (1) An explanation of how the insurance company will be notified of the insured's death and who will be responsible for filing a claim for benefits with the insurance company;
- (2) The name and address of the person who will receive notices from the insurance company, including, but not limited to, notices of a change in status of the insurance policy, a change in premium payments, a reduction in death benefits on a converted policy, and the end of the term for a term life insurance policy; and
- (3) The specific services to be provided by the escrow agent, and the fees charged by the escrow agent.

(b) Disclosures Prior to Closing. At least five business days prior to the date the purchase agreement is signed, the purchaser shall receive the following written disclosures in addition to any disclosures set forth in G.S. 78A-13:

- (1) No one can accurately predict the life expectancy of the insured. Many factors, including the nature of an insured's illness and improvements in medical treatments, can significantly affect the accuracy of a life expectancy prediction. Life expectancy predictions for persons who are elderly but not ill may be especially inaccurate;
- (2) Because Internal Revenue Code Section 408(a)(3) requires that no part of the trust funds of an individual retirement account may be invested in life insurance contracts, the Internal Revenue Service may disallow viatical settlement contracts held as investments inside IRA's; and
- (3) If an investment in a viatical settlement contract is made with qualified retirement plan funds, the investor may have difficulty taking the mandatory distributions beginning at age 70 1/2 because liquid funds may not be available from the plan's investments.

(c) Disclosure of the information listed in G.S. 78A-13 and in Rule .1319 of this Chapter shall not be deemed to relieve any person of the duty to comply with the antifraud provisions of the North Carolina Securities Act.

History Note: Authority G.S. 78A-8, 78A-9, 78A-10, 78A-11, 78A-12; S.L. 2001, c. 436, s. 7;
Temporary Adoption Eff. April 1, 2002.

**18 NCAC 06 .1320 VIATICAL SETTLEMENT
CONTRACT SUITABILITY REQUIREMENTS**

(a) Suitability Standards. Sales of viatical settlement contracts may be made only to accredited investors as defined in 17 C.F.R. 230.501(a).

(b) Limit on Size of Investment. The amount of the investment of any purchaser may not exceed five percent of the net worth of that purchaser.

(c) The administrator may require higher investor suitability standards with respect to a particular security offering or transaction where necessary for the protection of investors.

History Note: Authority S.L. 2001, c. 436, s. 10;
Temporary Adoption Eff. April 1, 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) Two copies of each rescission offer made under this Rule shall be filed with the administrator.

(e) A seller who makes a rescission offer pursuant to G.S. 78A-56(l) shall include in that rescission offer an undertaking by the seller to refund all the purchaser's money, without deductions, within seven business days after the date of receipt by the seller of the purchaser's notice of rescission or cancellation. The rescission offer shall be transmitted by the seller to the purchaser by certified mail, return receipt requested.

History Note: Authority G.S. 78A-56(g)(3); S.L. 2001, c. 436, s. 11; Eff. April 1, 1981; Temporary Amendment Eff. April 1, 2002.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Rule-making Agency: *State Personnel Commission*

Rule Citation: *25 NCAC 01E .0805, .0809, .1607*

Effective Date: *March 18, 2002*

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

Authority for the rulemaking: *G.S. 126-4; 127A-116*

Reason for Proposed Action: *House Bill 231, Section 23 (a) and (b) rewrote G.S. 127A-116 to provide that federal military duty or special emergency management service be included in the military leave provisions that provide for leave without loss of pay, time or efficiency rating. This provision was effective retroactive to September 1, 2001.*

Comment Procedures: *Questions or comments concerning these rules should be directed to Peggy Oliver, Human Resources Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.*

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0800 - MILITARY LEAVE

25 NCAC 01E .0805 ADDITIONAL PERIODS OF ENTITLEMENT FOR RESERVE COMPONENTS OF THE UNITED STATES ARMED FORCES

Periods of entitlement for military leave with pay for ~~the National Guard only members of the uniformed services reserve components for each period of involuntary service~~ are as follows:

- (1) Members of the National Guard shall receive full pay for infrequent special activities in the interest of the ~~State, State usually not exceeding one day,~~ when so ordered by the Governor or his authorized representative;
- (2) Members of the uniformed services reserve shall receive full pay for active state duty ~~(domestic disturbances, disasters, search and rescue, etc.) or federal duty~~ for periods not exceeding 30 consecutive calendar days. For periods in excess of 30 days, employees shall be entitled to military leave with differential pay between military basic pay and regular state pay for any period of involuntary service if military pay is the lesser. Military leave for active state duty is to be considered separate from and in addition to military leave which may be granted for other purposes.

History Note: Authority G.S. 126-4; 127A-116; Eff. February 1, 1976; Amended Eff. December 1, 1980; May 1, 1977; Temporary Amendment Eff. March 18, 2002.

25 NCAC 01E .0809 RETENTION AND CONTINUATION OF BENEFITS

During the period of ~~military leave with pay, reserve active duty, whether receiving full State pay, differential pay, or no pay,~~ no employee shall incur any loss of state service or suffer any adverse service rating. The employee shall continue to accumulate sick and vacation leave, aggregate service credit, and receive any promotion or salary increase for which otherwise eligible. Prior to the 30 days of full pay and the differential, the employee may choose to retain their vacation, exhaust their vacation, or be paid in a lump sum up to a maximum of 240 hours. If the employee is FLSA non-exempt, any accumulated compensatory time may also be exhausted prior to exhausting leave or may be paid in a lump sum.

History Note: Authority G.S. 126-4; 127A-116; Eff. February 1, 1976;

TEMPORARY RULES

Amended Eff. February 1, 1983; December 1, 1980; March 1, 1978;

Temporary Amendment Eff. March 18, 2002.

SECTION .1600 - COMMUNITY SERVICES LEAVE

25 NCAC 01E .1607 SPECIAL LEAVE PROVISIONS

(a) Agency heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head shall determine that a bonafide need for such services exists within a

given area. A bonafide need is defined as real or eminent danger to life or property.

(b) Each policy shall require proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

History Note: Authority G.S. 126-4;

Temporary Adoption Eff. March 18, 2002 adopts and replaces a permanent rulemaking originally proposed to be effective July 1, 2002.

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, April 18, 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, April 12, 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
Dr. Walter Futch
Jeffrey P. Gray
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

April 18, 2002 July 18, 2002

RULES REVIEW COMMISSION

March 21, 2002

MINUTES

The Rules Review Commission met on Thursday morning, March 21, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Laura Devan, David Twiddy, Jeffrey Gray, Thomas Hilliard, Jim Funderburk, John Tart, Robert Saunders, 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 West	NC Respiratory Care Board
Bill Crowell	DENR/DCM
Ed Burt	Division of Radiation Protection
Lee Cox	Division of Radiation Protection
Steve Benton	DENR/DCM
Barbara Jackson	NC Department of Labor
John Hoomani	NC Department of Labor
Lisa Thompson	NC State Board of Dental Examiners
Julia Lohman	NC Sheriffs' Standards & Training Commission
Jessica Gill	DENR/DCM
Shannon Crane	Division of Aging
Lynne Berry	Division of Aging
Susan Collins	DMH/DD/SAS
Cindy Kornegay	DMH/DD/SAS
Pamela Millward	NC Real Estate Commission
Jane Garvey	Department of Corrections
Jean Stanley	NC Board of Nursing
Theresa Shackelford	NC Department of Insurance
Flo Westin	NC Department of Insurance
John Corne	Attorney General's Office
Dedra Alston	DENR
Connie Brower	DENR
Elizabeth Kountis	DENR
Kris Horton	DHHS/DSS
Ledra Tabor	DENR
Thomas Allen	DENR/DAQ

RULES REVIEW COMMISSION

Harry Wilson	State Board of Education
Beth Melcher	National Alliance for the Mentally Ill
Elsie Roane	DHHS/DSS
Andrew Ritter	NC Board of Examiners of Engineers & Surveyors
Denise Stanford	Pharmacy Board/Dental Board/Contractors Board
Ann Christian	NC Substance Abuse Professional Certification Board
Derryl Walden	Division of Forest Resources
Scott Perry	Criminal Justice Education & Training Standards Comm.
Debbie Jackson	Division of Services for the Blind
Clay Pope	Division of Services for the Blind
Patty Holloway	Secretary of State
Scott Templeton	Secretary of State
Elizabeth Bishop	Vocational Rehabilitation Services

APPROVAL OF MINUTES

The meeting was called to order at 10:04 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the February 21, 2002, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/Commission for MH/DD/SAS – The Commission objected to .0201 due to ambiguity. The rule in (b) specifies three criteria that must be included in “positive treatment or habilitation methods” that must accompany any use of restrictive treatment measures. The standards in (b)(2) of “improvement of conditions” and an “enriched educational and social environment” are vague and undefined. They do not offer clear guidance to the state facility director who must implement these. The Commission approved .0204; .0205; and .0207.

10 NCAC 14P .0102: DHHS/Commission for MH/DD/SAS – The Commission approved this rule.

10 NCAC 14Q .0303: DHHS/Commission for MH/DD/SAS – The Commission approved this rule.

10 NCAC 14R .0101; .0105: DHHS/Commission for MH/DD/SAS – The Commission objected to .0101 due to ambiguity. In (b) the rule specifies three criteria that must be included in “positive treatment or habilitation methods” that must accompany any use of restrictive treatment measures. The standards in (b)(2) of “improvement of conditions” and an “enriched educational and social environment” are vague and undefined. They do not offer clear guidance to the state facility director who must implement these. The Commission objected to rule .0105 due to ambiguity. In (a)(2) before someone decides to use a “protective device,” the rule requires a review of “use of appropriate positive alternatives” and “less restrictive alternatives.” The choice must be to use “the least restrictive alternative.” It is unclear why one would be required to review positive alternatives, if they do not play a role in the decision. Even if there is to be some choice either required or allowed between positive alternatives and less restrictive ones, it is unclear how to weigh and choose between them. From a different point of view positive alternatives sound as if, by definition, they would always be less restrictive, even if they were not sufficient to solve the problem.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/Commission for MH/DD/SAS – The Commission objected to rule .6002 due to ambiguity. In (b)(1) and (2) it is not clear what constitutes “a related human service field.” It implies, without making clear, that there are “unrelated” human service fields that would not be acceptable. The Commission approved .0208; .0304; .0801; .0802; and .0803.

10 NCAC 19A .0601; .0602: Commission for the Blind – The Commission approved the rewritten .0601 and .0602 was returned to the agency at its request.

10 NCAC 19C .0207; .0209; .0309; .0311; .0410; .0504; .0511; .0607; .0701; .0702; .0704: Commission for the Blind – The Commission approved .0704 as rewritten and the remaining rewritten rules conditioned upon receiving technical changes in .0209 by the end of the day. The technical changes were subsequently received.

10 NCAC 19G .0105; .0107; .0805; .0806: Commission for the Blind – The Commission approved the rewritten rules.

10 NCAC 19H .0102; .0103: Commission for the Blind – The Commission approved .0102 as written and .0103 as rewritten.

12 NCAC 10B .0301; .0305; .0705; .0706; .0707; .0708; .0710; .0711; .0712: NC Sheriffs’ Education and Training Standards - The Commission approved the rewritten rules.

15A NCAC 2H .0802; .0803; .0805: DENR/Environmental Management Commission – The Commission approved the rewritten rules.

15A NCAC 6E .0103: DENR/Soil & Water Conservation Commission – No action was taken.

21 NCAC 1 .0301: NC Acupuncture Licensing Board – The Commission approved the rewritten rule.

21 NCAC 46 .1814: NC Board of Pharmacy – The Commission approved the rewritten rule.

21 NCAC 61 .0201; .0202; .0304; .0305; .0307; .0401: NC Respiratory Care Board – The Commission approved the rewritten rules. Commissioner Hayman did not participate in the discussion of or voting on these rules.

The meeting adjourned for a short break at 12:39.

The meeting reconvened at 12.45.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved unanimously with the following exceptions:

- 2 NCAC 9L .1102; .1103; .1108; .1110: Department of Agriculture – Staff recommended objection to these rules. Commissioner Gray made a motion to overrule the staff opinion and approve the rules. The motion passed unanimously.
- 2 NCAC 38 .0701: Department of Agriculture - Prior to its March 21, 2002 the meeting, the Rules Review Commission staff requested that the Board of Agriculture review this rule and consider making a technical change in item (3). At the meeting, the Rules Review Commission formally requested the agency to make a technical change pursuant to G.S. 150B-21.10. At least one of the Commissioners also expressed his concern at having an “explanatory note” within the rule.
- 10 NCAC 41F .0601: DHHS/Social Services Commission - The Commission objected to the rule due to lack of statutory authority, ambiguity and lack of necessity. Definitions (1) and (3) are set out in G.S. 131D-10.2(8) and (14). To the extent they repeat the statutes they are unnecessary. To the extent they differ and possibly conflict, the agency has no authority to rewrite the statutory definition. The agency could argue that the definition in the rules applies only to the rules, and the definition in the statutes applies in the statutes. However, if there is any substantive difference, then that is not clear and potentially quite confusing to anyone reading both. It would be difficult and confusing to know which definition applied when the rules make any reference to the statutes and vice versa. Note that a definition of “family” might be appropriate. Often in the rules the use of “family” seems to refer to the foster child’s birth family. However the foster home itself is called a “family” foster home.
- 10 NCAC 41F .0705: DHHS/Social Services Commission - The Commission objected to the rule due to ambiguity. It is unclear what the differences are in the types of quarterly visits. These all must be for the “specific purpose of assessing licensing requirements.” However, it appears that in two of these visits more is required. Yet the three purposes mentioned: discuss matters related to skills and abilities; services needed by the foster family; and ensuring that minimum licensing standards continue to be met, all these, especially the last, relate in one way or another to meeting licensing requirements. It is unclear how the visits could or should differ. Commissioner Twiddy recused himself from consideration of the Department of Insurance rules.
- 11 NCAC 8 .1418: NC Manufactured Home Board - The Commission objected to the rule due to ambiguity. It is unclear in paragraph (b)(5) what constitutes a “positive” manner, “varied” student backgrounds, and “personal” criticism.
- 11 NCAC 12 .1006: Department of Insurance - The Commission objected to the rule due to ambiguity. The first sentence of (a), at line 31, seems to contradict that portion of the third sentence beginning on line 33.
- 11 NCAC 12 .1028: Department of Insurance - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b)(4), page 2, line 15, it is unclear what constitutes “justification” for the waiver. As such this is not a specific enough guideline to satisfy the requirement in G.S. 150B-19(6) that an agency set “specific guidelines” it must follow in determining whether to waive the requirement. If specific guidelines are established outside rulemaking, there is no authority for that. Commissioner Saunders recused himself from Environmental Management Commission rules.
- 15A NCAC 9C .0507: Division of Forest Resources – The Commission objected to the rule due to ambiguity. It is not clear what standards the nursery and tree improvement forester is to use in accepting orders. It is also not clear when the Director will require a percentage of the contract price for a custom order or what percentage he will require. The objection applies to existing language in the rule.
- 15A NCAC 9C .0510: Division of Forest Resources – The Commission objected to the rule due to ambiguity. It is not clear when the nursery and tree improvement forester will approve an applicant’s credit. It is also not clear when a percentage of the selling price will be required or what percentage will be required. The objection applies to existing language in the rule.
- 15A NCAC 9C .0516: Division of Forest Resources - The Commission objected to the rule due to lack of statutory authority and ambiguity. It is not clear what is meant by “not responsible for storage.” It clearly does not mean they will not do it because the next sentence authorizes a fee to do it. But it is also not clear what the fee is. There is no authority to set it outside rulemaking.
- 15A NCAC 9C .0604: Division of Forest Resources - The Commission objected to the rule due to ambiguity. In (b), it is not clear what the fixed hourly rates are. It is also not clear what the conversion rates are. The objection applies to existing language in the rule.
- 15A NCAC 9C .0605: Division of Forest Resources - The Commission objected to the rule due to ambiguity. In (3), it is not clear what procedures have been established by the director. The objection applies to existing language in the rule.
- 15A NCAC 9C .0607: Division of Forest Resources - The Commission objected to the rule due to ambiguity. It is not clear what is meant by “approve all custom forestry practices.” The objection applies to existing language in the rule.
- 15A NCAC 9C .0902: Division of Forest Resources - The Commission objected to the rule due to ambiguity and lack of necessity. In (c), it is not clear what portion of funds the Secretary will designate. It is also not clear what practices are “certain approved practices.” It is not clear what date “the specified date is.” In (g), it is not clear what the current “cost sharing rate” is. Paragraph (j) deals with internal management and is thus not a rule and is therefore unnecessary. The objection applies to existing language in the rule.
- 15A NCAC 9C .0903: Division of Forest Resources - The Commission objected to the rule due to ambiguity. In (1)(n)(a), it is not clear what would constitute “adequate” regeneration. There is the same issue in (6). The objection applies to existing language in the rule.

RULES REVIEW COMMISSION

15A NCAC 11 .0104: DENR/Radiation Protection Commission – The Commission objected to the rule due ambiguity. In (36), it is not clear what is meant by “adequate” measurement technology. In (71)(a)(i)(D), it is not clear what would constitute a “significant” difference. The objection applies to existing language in the rule.

15A NCAC 11 .0320: DENR/Radiation Protection Commission -The Commission objected to the rule due to ambiguity. In (a)(4), it is not clear what constitutes “extensive experience.” In (a)(5), it is not clear what constitutes “suitable evidence.” The objection applies to existing language in the rule.

15A NCAC 11 .1403: DENR/Radiation Protection Commission -The Commission objected to the rule due to lack of statutory authority and ambiguity. Not only is item (3) unclear because there do not appear to be any rules providing for approval of persons offering training courses, even if there were, there is no authority cited to approve persons offering training courses.

15A NCAC 11 .1408: DENR/Radiation Protection Commission - The Commission objected to the rule due to ambiguity. It is not clear how the agency determines the expiration date on the certificate of registration. There do not appear to be any rules establishing expiration dates. The objection applies to existing language in the rule.

15A NCAC 11 .1417: DENR/Radiation Protection Commission -The Commission objected to the rule due to ambiguity. In (d), it is not clear what is meant by “properly” sanitized. The objection applies to existing language in the rule.

15A NCAC 11 .1418: DENR/Radiation Protection Commission - The Commission objected to the rule due to ambiguity. In (i), it is unclear which is required to be approved by the agency – the operators, or the formal training courses. In either case, it is not clear what the standards for approval are. The objection applies to existing language in the rule.

15A NCAC 11 .1610: DENR/Radiation Protection Commission - The Commission objected to the rule due to ambiguity. In (b), it is not clear what is meant by “substantial” variation. The objection applies to existing language in the rule.

15A NCAC 11 .1613: DENR/Radiation Protection Commission - The Commission objected to .1613 due to ambiguity. In (b), it is not clear what standards the agency will use to determine how often instruments and equipment must be calibrated to meet the “periodically” standard. The objection applies to existing language in the rule.

18 NCAC 5B .0101: Secretary of State – The rule was withdrawn by the agency.

18 NCAC 5B .0103: Secretary of State - The Commission objected to the rule due to lack of necessity. As well as being difficult to read and understand, paragraph (b) merely repeats the provision of G.S. 25-9-501(a) and is thus unnecessary.

18 NCAC 5B .0105: Secretary of State - The Commission objected to the rule due to lack of necessity. Paragraph (a) is unnecessary. There is no need to incorporate by reference forms which are already statutory required. In (b), it does not seem necessary to require that UCC forms be purchased from commercial printers. There does not seem to be any reason why a person filing could not use forms he downloads and prints himself. The first sentence is merely informational and not a rule.

18 NCAC 5B .0106: Secretary of State - The Commission objected to the rule due to ambiguity and lack of necessity. In (b)(2), it is not clear what standards the office will use in determining if a bank or drawer is acceptable. In (c)(1), it is not clear what “Item g” says. If the office understands this provision to be a budget policy and not a rule, then the provision is unnecessary and should not be in the rule.

18 NCAC 5B .0107: Secretary of State - The Commission objected to the rule due to ambiguity. In (a), it is not clear what is meant by “on a non-discriminatory basis,” nor what the phrase adds to the rule.

18 NCAC 5B .0108: Secretary of State - The Commission objected to the rule due to lack of statutory authority and ambiguity. It is not clear what the subscription cost in (2) and (3)(b) is. There is no authority cited for setting it outside rulemaking.

18 NCAC 5B .0310: Secretary of State -The Commission objected to the rule due to ambiguity. It is not clear what versions and releases of the XML Format are acceptable to the filing office. It is also not clear what are the current document type definitions (DTD).

18 NCAC 5B .0402: Secretary of State – The rule was withdrawn by the agency.

18 NCAC 5B .0410: Secretary of State -The Commission objected to the rule due to ambiguity. In (a)(2), it is not clear how the agency is going to determine when the availability of microfilmed records is no longer needed.

21 NCAC 12 .0210: NC Board for General Contractors - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for this rule which exempts some contractors who meet the definition of general contractor from the licensure requirement. Commissioner Gray voted against the motion to object.

Commissioner Futch recused himself from NC Board of Dental Examiners rules.

21 NCAC 16B .0315: NC Board of Dental Examiners - The Commission objected to the rule due to ambiguity. In (b) and (c), it is not clear what standards the Board will use in approving an additional course of study. The objection applies to existing language in the rule.

21 NCAC 16C .0310: NC Board of Dental Examiners - The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority for the provision in this rule requiring education beyond that required by the statutes for applicants who have failed all or part of the examination three times. It is also unclear what standards the Board will use in approving the additional courses of study.

21 NCAC 16D .0102: NC Board of Dental Examiners - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the Board to determine who is liable for actions as this rule does in (b).

21 NCAC 16D .0105: NC Board of Dental Examiners – The rule was approved with Commissioner Funderburk voting against the motion to approve.

21 NCAC 16E .0104: NC Board of Dental Examiners - The rule was approved with Commissioner Funderburk voting against the motion to approve.

RULES REVIEW COMMISSION

21 NCAC 16Q .0202: NC Board of Dental Examiners - The Commission objected to the rule due to lack of statutory authority and ambiguity. It is not clear what requirements have been established by the Board. There is no authority to establish requirements outside of rulemaking. The objection applies to existing language in the rule.

21 NCAC 16Q .0302: NC Board of Dental Examiners - The Commission objected to the rule due to lack of statutory authority and ambiguity. In both (a) and (b) it is not clear what requirements have been established by the Board. There is no authority to establish requirements outside of rulemaking. The objection applies to existing language in the rule.

21 NCAC 16Y .0101: NC Board of Dental Examiners - The Commission objected to the rule due to ambiguity. In (2), it is to clear what is meant by a "recognized" dental program. It is also not clear what is meant by "Board approved facility" or what the standards for approval are.

21 NCAC 16Y .0102: NC Board of Dental Examiners - The Commission objected to the rule due to lack of statutory authority, ambiguity and lack of necessity. In (a)(1), it is not clear what information is required by the Board on an application. In (b), it is not clear what is meant by "recognized" dental program. In (b)(1), it is not clear what is meant by "Board approved facility." In (c), it is not clear why it is necessary for the Board to inquire into an applicant's character since there are no character requirements for obtaining a permit. There is also no authority for the Board to require anyone to waive any legal rights he may have.

21 NCAC 16Y .0103: NC Board of Dental Examiners -The Commission objected to the rule due to ambiguity. It is not clear what employment sites are approved, or alternatively what the standards for approval are. In (c), it is not clear what standards the Board will use in approving a change of practice location.

21 NCAC 16Y .0104: NC Board of Dental Examiners -The Commission objected to the rule due to lack of statutory authority. In (a) and (b), there is no authority for the Board to determine who is liable for actions. That is for the courts to determine.

21 NCAC 36 .0227: NC Board of Nursing - The Commission objected to the rule due to ambiguity. In (l)(5) it is not clear what the formula for dividing fees is.

21 NCAC 36 .0301: NC Board of Nursing - The Commission objected to the rule due to lack of necessity. This rule is just something of a summary statement and contains no requirements not already existing elsewhere in the statutes or rules. It is not necessary for inclusion in the NC Administrative Code. The objection applies to existing language in the rule.

21 NCAC 36 .0302: NC Board of Nursing - The Commission objected to the rule due to ambiguity. In (c), it is not clear what is meant by a "qualified" program director. In (k), it is not clear what standards the Board will use in deciding whether to extend the approval period. The objection applies to existing language in the rule.

21 NCAC 36 .0321: NC Board of Nursing - The Commission objected to the rule due to ambiguity. In (l)(2), it is not clear what is mean by "major" changes. The objection applies to existing language in the rule.

21 NCAC 50 .0104: NC Board of Examiners of Plumbing, Heating, & Fire Sprinkler Contractors - The Commission objected to the rule due to lack of necessity. This rule deals with the internal management of the agency and is thus not a rule and is unnecessary. The objection applies to existing language in the rule.

21 NCAC 50 .0404: NC Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors - The Commission objected to the rule due to ambiguity. The use of the word "may" in the last two sentences in (a) leaves open the question of when evidence of compliance will be required and when the referenced standards will be applied. The objection applies to existing language in the rule. Commissioner Twiddy recused himself from Real Estate Commission rule.

21 NCAC 68 .0202: NC Substance Abuse Professional Certification Board - The Commission objected to the rule due to ambiguity. Paragraph (b) is not consistent with G.S. 90-113.40A(a) because it does not require documentation of three hours of educational training in ethics as the statute does. In addition, G.S. 90-113.38 (b1) sets the fee for registration at \$150 not \$125. The objection applies to existing language in the rule.

21 NCAC 68 .0203: NC Substance Abuse Professional Certification Board -The Commission objected to the rule due to lack of statutory authority. G.S. 90-113.38(c) sets the reexamination fee at \$150. There is no authority for the provision in this rule setting it at \$125. The objection applies to existing language in the rule.

21 NCAC 68 .0205: NC Substance Abuse Professional Certification Board -The Commission objected to the rule due to lack of statutory authority. Item (1), by not recognizing the 3000 hours of supervised experience by a graduate of a master's degree program, is not consistent with G.S. 90-113.40(a)(8). Item (3) is not consistent with G.S. 90-113.38 (c) which sets the reexamination fee at \$150 for each reexamination. The objection applies to existing language in the rule.

21 NCAC 68 .0215: NC Substance Abuse Professional Certification Board -The Commission objected to the rule due to lack of statutory authority. This rule is not consistent with G.S. 90-113.38(d) which sets the verification fee at \$25.

COMMISSION PROCEDURES AND OTHER BUSINESS

Chairman Powell read a letter to the Commission from the North Carolina Board of Ethics concerning Commissioner Robert Saunders. The NC Board of Ethics found that Mr. Saunders has no actual conflict of interest but does have the potential for conflict interest.

Mr. DeLuca discussed concerns with the budget. All agencies have been instructed to draft budget proposals showing cuts of 7% to 11% from this year's budget. The most practical solution at the lower end of the range is to reduce the number of commission meetings to six. Of course this will require a statutory change. At the upper end of the range cuts in personnel costs will be required.

Because of the extraordinary budget situation there will be no meetings in May or June. This should not result in any change in the effective date of any substantive rule changes.

RULES REVIEW COMMISSION

The next meeting of the Commission is Thursday, April 18. The Commission is also planning to meet Tuesday, April 30, 2002, to consider any responses to objections from the April meeting.

The meeting adjourned at 2:03 p.m.

Respectfully submitted,
Lisa Johnson

**Commission Review/Administrative Rules
Log of Filings (Log #186)
February 20, 2002 through March 20, 2002**

AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE

Exemptions	02	NCAC	9L	.1303	Amend
Record Keeping Requirements	02	NCAC	9L	.1305	Amend
Recipient Identification	02	NCAC	9L	.1306	Adopt
Definitions	02	NCAC	34	.0102	Amend
Wood Destroying Insects Excluding Subterranean Ter	02	NCAC	34	.0501	Amend
Subterranean Termite Control Buildings After Const	02	NCAC	34	.0503	Amend
Subterranean Termite Prevention Res Bldgs Under Co	02	NCAC	34	.0505	Amend
Min Require Subterranean Termite Prev/Commercial	02	NCAC	34	.0506	Amend
Agreements	02	NCAC	34	.0601	Amend
Wood Destroying Organisms Records	02	NCAC	34	.0604	Amend
Contractual Agreements for Wood Destroying Organis	02	NCAC	34	.0605	Amend
Written Records of Household Pest Control	02	NCAC	34	.0703	Amend
Written Records of Fumigation	02	NCAC	34	.0803	Amend
Fumigation Requirements Safety and Safety Equipmen	02	NCAC	34	.0805	Amend
Fumigation Requirements for Fumigation Crew	02	NCAC	34	.0806	Amend
Prohibited Acts	02	NCAC	34	.0904	Amend

DHHS/CHS

Scope	10	NCAC	14G	.0101	Amend
General Policies Regarding Interventive Procedures	10	NCAC	14J	.0203	Amend
Procedures Seclusion Physical Restraint or Isolat	10	NCAC	14J	.0206	Amend
Interventions Requiring Additional Safeguards	10	NCAC	14J	.0210	Amend
Training Emphasis to Alternatives to Restrictive	10	NCAC	14J	.0211	Adopt
Training in Seclusion Physical Restrain and Isolat	10	NCAC	14J	.0212	Adopt
Scope	10	NCAC	14P	.0101	Amend
Policy on Rights Restrictions	10	NCAC	14Q	.0101	Amend
Seclusion Physical Restrain and Isolation Time Out	10	NCAC	14R	.0104	Amend
Training on Alternatives to Restrictive Intervent	10	NCAC	14R	.0108	Adopt
Training in Seclusion Physical Restraint and Isola	10	NCAC	14R	.0109	Adopt

DHHS/COMMISSION FOR THE BLIND

Eligibility of Services	10	NCAC	19H	.0104	Amend
-------------------------	----	------	-----	-------	-------

DHHS/DIVISION OF VOCATIONAL REHABILITATION SERVICES

Definitions	10	NCAC	20A	.0102	Amend
Vocational and Other Training	10	NCAC	20C	.0304	Amend
Occupational Licenses Tools Equipment & Supplies	10	NCAC	20C	.0314	Amend

DEPARTMENT OF INSURANCE

Reference Filings	11	NCAC	10	.1113	Adopt
Transmittal Header	11	NCAC	10	.1114	Adopt
Letter of Transmittal	11	NCAC	10	.1203	Repeal
Commercial Lines	11	NCAC	10	.1206	Amend
Transmittal Header	11	NCAC	10	.1209	Adopt

JUSTICE/N C PRIVATE PROTECTIVE SERVICES BOARD

Training Requirements for Armed Security Guards	12	NCAC	07D	.0807	Amend
Application for Firearms Trainer Certificate	12	NCAC	07D	.0902	Amend

DEPARTMENT OF LABOR

RULES REVIEW COMMISSION

Copies Available	13	NCAC	07A	.0302	Amend
Construction	13	NCAC	07F	.0201	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION					
Purpose	15A	NCAC	02D	.1001	Amend
Applicability	15A	NCAC	02D	.1002	Amend
Tailpipe Emission Standards for CO and HC	15A	NCAC	02D	.1004	Amend
On-Board Diagnostic Standards	15A	NCAC	02D	.1005	Amend
DENR/WILDLIFE RESOURCES COMMISSION					
Wildlife Taken for Depredation	15A	NCAC	10B	.0106	Amend
Attendance of Traps	15A	NCAC	10B	.0110	Amend
Permitted Archery Equipment	15A	NCAC	10B	.0116	Amend
Replacement Costs	15A	NCAC	10B	.0117	Amend
Sale of Wildlife	15A	NCAC	10B	.0118	Amend
Bear	15A	NCAC	10B	.0202	Amend
Deer (White-Tailed)	15A	NCAC	10B	.0203	Amend
Wild Turkey (Bearded Only)	15A	NCAC	10B	.0209	Amend
Public Mountain Trout Waters	15A	NCAC	10C	.0205	Amend
Trotlines and Set-Hooks	15A	NCAC	10C	.0206	Amend
Manner of Taking Inland Game Fishes	15A	NCAC	10C	.0302	Amend
Open Seasons Creel & Size Limits	15A	NCAC	10C	.0305	Amend
Manner of Taking Nongame Fishes	15A	NCAC	10C	.0401	Amend
Permitted Special Devices and Open Seasons	15A	NCAC	10C	.0407	Amend
General Regulations Regarding Use	15A	NCAC	10D	.0102	Amend
Hunting on Gamelands	15A	NCAC	10D	.0103	Amend
Fishing on Gamelands	15A	NCAC	10D	.0104	Amend
Burke County	15A	NCAC	10F	.0323	Amend
DENR/COMMISSION FOR HEALTH SERVICES					
Public Information Part 2	15A	NCAC	13A	.0104	Amend
Definitions	15A	NCAC	18D	.0105	Amend
Classification of Water Treatment Facilities	15A	NCAC	18D	.0205	Amend
Certified Operator Required	15A	NCAC	18D	.0206	Amend
Revocation of Certificate	15A	NCAC	18D	.0307	Amend
Operator in Responsible Charge	15A	NCAC	18D	.0701	Amend
REVENUE, DEPARTMENT OF					
Real Property Creation of an Estate by the Entire	17	NCAC	03C	.0106	Repeal
Real Property Termination of an Estate by the Enti	17	NCAC	03C	.0107	Repeal
Extensions	17	NCAC	03C	.0108	Amend
Business and Nonbusiness Income	17	NCAC	05C	.0703	Amend
Dividends Received from Disc	17	NCAC	05C	.2404	Amend
Forms	17	NCAC	06B	.0101	Repeal
Items Requiring Special Attention	17	NCAC	06B	.0104	Amend
Extensions	17	NCAC	06B	.0107	Amend
Joint Returns	17	NCAC	06B	.0112	Amend
Electronic Filing of Individual Income Tax Returns	17	NCAC	06B	.0118	Amend
Definition of Resident	17	NCAC	06B	.3901	Amend
Nonresident Members of Professional Athletic Teams	17	NCAC	06B	.3905	Amend
Employee's Withholding Allowance Certificate	17	NCAC	06C	.0123	Amend
Returns	17	NCAC	07B	.0104	Amend
Sales Price Discounts	17	NCAC	07B	.0108	Amend
Food and Food Products	17	NCAC	07B	.2201	Amend
Contractors Subcontractors Retailer Contractors	17	NCAC	07B	.2602	Amend
Building Materials	17	NCAC	07B	.2611	Amend
Telecommunications and Telegraph Companies	17	NCAC	07B	.3201	Amend
Telephone Companies Specific Four Percent Items	17	NCAC	07B	.3202	Amend
Cellular Telephone Companies	17	NCAC	07B	.3204	Amend
Reusable Containers	17	NCAC	07B	.3907	Amend
Boats Boat Trailers and Accessories	17	NCAC	07B	.4602	Amend
Shipments from Outside North Carolina	17	NCAC	07B	.4901	Repeal
Shipments from within North Carolina	17	NCAC	07B	.4902	Repeal
Application of Tax	17	NCAC	07C	.0304	Amend

RULES REVIEW COMMISSION

TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS

Permits Authority Application and Enforcement	19	NCAC	02D .0601	Amend
Permits Weight Dimensions and Limitations	19	NCAC	02D .0607	Amend

OCCUPATIONAL LICENSING BOARDS/COSMETIC ART EXAMINERS, STATE BOARD OF

Postage and Handling	21	NCAC	14B .0603	Amend
Space Requirement	21	NCAC	14G .0103	Amend
Internships	21	NCAC	14J .0208	Amend
Hours of Course Work Required for Manicurist Only	21	NCAC	14K .0106	Repeal
Renewals Expired Licenses Licenses Required	21	NCAC	14P .0105	Amend
Licenses Required	21	NCAC	14P .0106	Amend
Revocation of Licenses and Other Disciplinary Meas	21	NCAC	14P .0108	Amend
Civil Penalty Procedures	21	NCAC	14P .0116	Amend
Teacher Continuing Education	21	NCAC	14Q .0101	Adopt
Attendance Verification	21	NCAC	14Q .0102	Adopt
Certificating Agent	21	NCAC	14Q .0103	Adopt
Program Sites	21	NCAC	14Q .0104	Adopt
General Program Format Time Frame Space	21	NCAC	14Q .0105	Adopt
Instructors and Monitors of Continuing Education	21	NCAC	14Q .0106	Adopt
Postage/Handling Fee	21	NCAC	14Q .0107	Adopt
Proof of Attendance	21	NCAC	14Q .0108	Adopt
Board to Observe Program	21	NCAC	14Q .0109	Adopt
Violations	21	NCAC	14Q .0110	Adopt

OCCUPATIONAL LICENSING BOARDS/N C MEDICAL BOARD

Location	21	NCAC	32A .0101	Amend
Requirement Exception	21	NCAC	32A .0105	Repeal
Provisions for Petition for a Rule Change	21	NCAC	32A .0106	Repeal
Definitions	21	NCAC	32B .0101	Amend
Forms	21	NCAC	32B .0103	Repeal
Physician Licensing Requirements	21	NCAC	32B .0104	Adopt
Licensing by Examination	21	NCAC	32B .0105	Adopt
Licensing by Endorsement	21	NCAC	32B .0106	Adopt
Medical Education	21	NCAC	32B .0201	Repeal
ECFMG Certification	21	NCAC	32B .0202	Repeal
Certification of Graduation	21	NCAC	32B .0203	Repeal
Certified Photograph	21	NCAC	32B .0204	Repeal
Application Forms	21	NCAC	32B .0206	Repeal
Letters of Recommendation	21	NCAC	32B .0207	Repeal
Examination Fee	21	NCAC	32B .0209	Repeal
Deadline	21	NCAC	32B .0210	Repeal
Passing Score	21	NCAC	32B .0211	Repeal
Examination Times	21	NCAC	32B .0212	Repeal
Graduate Medical Education and Training for Licens	21	NCAC	32B .0213	Repeal
Personal Interview	21	NCAC	32B .0214	Repeal
Examination Combinations	21	NCAC	32B .0215	Repeal
Medical Education	21	NCAC	32B .0301	Repeal
ECFMG Certification	21	NCAC	32B .0302	Repeal
Application Forms	21	NCAC	32B .0304	Repeal
Examination Basis for Endorsement	21	NCAC	32B .0305	Repeal
Letters of Recommendation	21	NCAC	32B .0306	Repeal
Certified Photograph and Certification of Graduati	21	NCAC	32B .0307	Repeal
Fees	21	NCAC	32B .0308	Repeal
Personal Interview	21	NCAC	32B .0309	Repeal
Deadline	21	NCAC	32B .0310	Repeal
Endorsement Relations	21	NCAC	32B .0311	Repeal
Routine Inquiries	21	NCAC	32B .0312	Repeal
Graduate Medical Education and Training	21	NCAC	32B .0313	Repeal
Passing Exam Score	21	NCAC	32B .0314	Repeal
Ten Year Qualification	21	NCAC	32B .0315	Repeal
Spex Fee	21	NCAC	32B .0316	Repeal
Credentials	21	NCAC	32B .0401	Repeal

RULES REVIEW COMMISSION

Temporary License Fee	21	NCAC	32B	.0402	Repeal
Medical Education	21	NCAC	32B	.0508	Amend
Fees	21	NCAC	32M	.0112	Amend
OCCUPATIONAL LICENSING BOARDS/MIDWIFERY JOINT COMMITTEE					
Due Process	21	NCAC	33	.0105	Amend
OCCUPATIONAL LICENSING BOARDS/N C BOARD OF NURSING					
Selection and Qualifications of Nurse Members	21	NCAC	36	.0109	Amend
Determination of Vacancy	21	NCAC	36	.0112	Amend
Determination of Qualifications	21	NCAC	36	.0113	Amend
Components of Nursing Practice for the Registered	21	NCAC	36	.0224	Amend
Components of Nursing Practice for the Licensed	21	NCAC	36	.0225	Amend
OCCUPATIONAL LICENSING BOARDS/N C BOARD OF EXAMINERS OF ENGINEERS AND SURVEYORS					
Requirements for Licensing	21	NCAC	56	.0501	Amend
Application Procedure Individual	21	NCAC	56	.0502	Amend
Expirations and Renewals of Certificates	21	NCAC	56	.0505	Amend
Application Procedure Individual	21	NCAC	56	.0602	Amend
Expirations and Renewals of Certificates	21	NCAC	56	.0606	Amend
Rules of Professional Conduct	21	NCAC	56	.0701	Amend
Annual Renewal	21	NCAC	56	.0804	Amend
Offices	21	NCAC	56	.0901	Repeal
Standard Certification Requirements	21	NCAC	56	.1103	Amend
Classification of Vertical Control	21	NCAC	56	.1605	Amend
Specifications for Topographic and Planimetric Mapp	21	NCAC	56	.1606	Amend
Global Positioning System Surveys	21	NCAC	56	.1607	Amend
Classifications/Land Information System/Geographi	21	NCAC	56	.1608	Amend
Minimum Photogrammetric Production	21	NCAC	56	.1609	Repeal
Reinstatement	21	NCAC	56	.1708	Repeal
Sponsors	21	NCAC	56	.1713	Repeal
DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION					
Program Implementation Agency & University	25	NCAC	01L	.0104	Amend

AGENDA
RULES REVIEW COMMISSION
April 18, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Agriculture – 2 NCAC 38 .0701 Objection 03/21/02 (DeLuca)
 - B. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201 Objection 03/21/02 (DeLuca)
 - C. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Objection 03/21/02 (DeLuca)
 - D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Objection 03/21/02 (DeLuca)
 - E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .6002 Objection 03/21/02 (DeLuca)
 - F. DHHS/Social Services Commission – 10 NCAC 41F .0601; .0705 Objection 03/21/02 (DeLuca)
 - G. NC Manufactured Home Board – 11 NCAC 8 .1418 Objection 03/21/02 (DeLuca)
 - H. Department of Insurance – 11 NCAC 12 .1006; .1028 Objection 03/21/02 (DeLuca)
 - I. DENR/Soil and Water Conservation Commission – 15A NCAC 6E .0103 Objection on 12/20/01 (Bryan)
 - J. DENR/Division of Forest Resources – 15A NCAC 9C .0507; .0510; .0516; .0604; .0605; .0607; .0902; .0903 Objection 03/21/02 (Bryan)
 - K. DENR/Radiation Protection Commission – 15A NCAC 11 .0104; .0320; .1403; .1408; .1417; .1418; .1610; .1613 Objection (Bryan)
 - L. Secretary of State – 18 NCAC 5B .0103; .0105; .0106; .0107; .0108; .0310; .0410 Objection 03/21/02 (Bryan)
 - M. NC Licensing Board for General Contractors – 21 NCAC 12 .0210 Objection 03/21/02 (Bryan)
 - N. NC Board of Dental Examiners – 21 NCAC 16B .0315 Objection 03/21/02 (Bryan)
 - O. NC Board of Dental Examiners – 21 NCAC 16C .0310 Objection 03/21/02 (Bryan)
 - P. NC Board of Dental Examiners – 21 NCAC 16D .0102 Objection 03/21/02 (Bryan)
 - Q. NC Board of Dental Examiners – 21 NCAC 16Q .0202; .0302 Objection 03/21/02 (Bryan)
 - R. NC Board of Dental Examiners – 21 NCAC 16Y .0101; .0102; .0103; .0104 Objection 03/21/02 (Bryan)
 - S. Board of Nursing – 21 NCAC 36 .0227; .0301; .0302; .0321 Objection 03/21/02 (Bryan)

RULES REVIEW COMMISSION

- T. NC Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0104; .0404
Objection 03/21/02 (Bryan)
- U. NC Substance Abuse Professional Certification Board – 21 NCAC 68 .0202; .0203; .0205; .0215
Objection 03/21/02 (Bryan)
- IV. Review of rules (Log Report #186)
- V. Commission Business
- VI. Next meeting: Tuesday, April 30, 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	
NC ABC Commission v. James Okwudili Nwizu, T/A Sahara Mini Mart	01 ABC 1209	Elkins	02/01/02	
NC ABC Commission v. Colap Ent., Inc. T/A Pantana Bobs	01 ABC 1472	Morrison	03/05/02	
NC ABC Commission v. W D B, Inc. T/A Twin Peeks	01 ABC 1962	Wade	03/11/02	
NC ABC Commission v. Fadhle Kassim Hussein T/A Hornes Church Convenient Mart	01 ABC 2294	Lassiter	03/12/01	
<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	
Ricardo Darnell Jones v. NC Crime Victims Compensation Commission	01 CPS 0242	Elkins	02/01/02	
Marie King Cutler v. NC Crime Victims Compensation Commission	01 CPS 0926	Gray	01/28/02	
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	
David Nixon v. NC Crime Victims Compensation Commission	01 CPS 1330	Elkins	02/01/02	16:18 NCR 2055
Edna Hunt v. NC Crime Victims Compensation Commission	01 CPS 1434	Chess	01/10/02	
Kiffin Johnson v. NC Dept. of Crime Control & Public Safety	01 CPS 1517	Morrison	03/14/02	
<u>CULTURAL RESOURCES</u>				
Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01	
<u>HEALTH AND HUMAN SERVICES</u>				
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01	

CONTESTED CASE DECISIONS

Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	Wade	08/16/01
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
Ruby L. Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
Donna Ray Snow v. NC Dept. of Health & Human Services	01 DHR 0122	Gray	11/27/01
Merle Marie Kemp v. DHHR, Div. of Child Development	01 DHR 0207	Reilly	11/01/01
Renita Lewis-Walters v. (ADATC), Dept. of Health & Human Services	01 DHR 0286	Morrison	06/08/01
Thomas M. Poole v. Dept. of Health & Human Services	01 DHR 0335	Lassiter	07/26/01
Terry Westmoreland v. John Umstead Hospital	01 DHR 0392	Elkins	08/15/01
Duane E. McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W. Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L. Foster, Reansia M. Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D. Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Gary Keys v. NC DHHS, Jones Co. Dept. of Social Services	01 DHR 0524	Conner	11/07/01
Adam Query Fisher, Jr. v. DHHS, Julian F. Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E. Partridge v. DHHS, Julian F. Keith, ADATC	01 DHR 0560	Wade	06/19/01
Eunice L. Walden v. NC DHHS	01 DHR 0589	Gray	09/11/01
Robert W. Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01
Eric L. Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Millsway Healthcare, Inc. v. Blue Ridge Area Authority	01 DHR 0628 ¹	Conner	02/25/02
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Blue Ridge Authority v. Millsway Healthcare, Inc.	01 DHR 0640 ¹	Conner	02/25/02
Charles Anthony Tart v. DHHS, Walter B. Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Mable Barnes, CNA v. DHHS	01 DHR 0714	Conner	09/14/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Helen Yoo, Happy Hill Garden v. NC Dept. of Public Health & Human Svcs.	01 DHR 0781	Conner	09/18/01
Mrs. Felicia Lash Moore v. NC DHHS	01 DHR 0784	Elkins	11/13/01
Margaret Rinkel Sanderlin v. NC Dept. of Health & Human Services	01 DHR 0831	Conner	09/12/01
Donovan Rogers v. Dept. of Health & Human Services	01 DHR 0840	Conner	09/19/01
Monique S. Wearren v. NC Dept. of Health & Human Services	01 DHR 0841	Conner	09/04/01
Kathy Marie Pollard v. NC Dept. of Human Services	01 DHR 0867	Conner	03/14/02
Wendy Nicole Smith Pearson v. NC DHHS (Health Care Personnel Registry Section)	01 DHR 0883	Smith	03/08/02
Donna Faye Smith v. Department of Human Resources	01 DHR 0887	Mann	11/02/01
Stephen & Sandra Aycock v. NC DHHS	01 DHR 0947	Gray	03/11/02
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Edward D. Connor v. Dept. of Health & Human Services	01 DHR 0978	Chess	07/05/01
Subrenia Fillyow v. NC Dept. of Human Resources	01 DHR 0996	Lassiter	08/16/01
Portia A. Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01
Dorothy Davis v. Janet Jones RN, HCPR Nurse Investigator	01 DHR 1105	Conner	10/25/01
Shirley A. Johnson v. Social Services, State Taxes	01 DHR 1126	Wade	09/19/01
Janet Elizabeth King v. Dept. of Health & Human Services	01 DHR 1185	Morrison	09/11/01
Denise Reed v. NC Dept. of Health and Human Services	01 DHR 1252	Gray	11/26/01
Amanda L. Hulin v. NC Nurse Aide Registry, Centerclair Nursing Facility	01 DHR 1253	Chess	11/30/01
David C. Spence v. Walter B. Jones, ADATC & NC DHHS	01 DHR 1261	Elkins	10/24/01
Arnetta Thomas v. NC Department of Health & Human Services	01 DHR 1264	Wade	10/26/01
Sadina Hall v. Carolina House & NC Nurse Aide Registry	01 DHR 1274	Conner	01/10/02
Terrie & Randy Williams v. Martin Co. DSS - Williamston, NC; Nikki Danleis/Vickey Manning	01 DHR 1278	Lassiter	12/20/01
Sallye A. Hardy, Rocker Room Child Care v. Yvetter Pollock, Dare Co. DSS	01 DHR 1335	Chess	12/11/01
Juanita D. Blevins v. NC DHHS	01 DHR 1341	Conner	02/13/02
Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01
USA Grocery Store, Yousif Alezi v. NC DHHS	01 DHR 1350	Chess	12/13/01
Annette Camilla Adams v. Department of Health & Human Services	01 DHR 1353	Chess	01/09/02
Michael R. Tilley, Tina W. Tilley v. NC DHHS	01 DHR 1387	Lassiter	02/15/02
Constance Lindsey v. The Nurse Aid I Registry	01 DHR 1425	Gray	10/26/01
Adrienne McSween v. DHR, R. Marcus Lodge, Gen. Counsel	01 DHR 1443	Morrison	10/10/01
Sylvia Bosier v. NC DHHS	01 DHR 1447	Mann	03/21/02
Great Am. Foods, Inc. Anan Abour v. DHHS, WIC Program	01 DHR 1468	Wade	10/11/01
Kevin Andrew Coleman v. Dept. Social Svce, Lexington, NC	01 DHR 1479	Mann	12/13/01
Daniel Repert v. The Guilford Center (The State DMH/DD/SAS	01 DHR 1562	Mann	12/10/01
Sadio-Tene Lloyd (for client TiNesha Booker) v. The Guilford Center/Child Authorization Team/The State DMH/DD/SAS	01 DHR 1577	Mann	11/15/01
Anissa Burchette v. NC DHHS, Health Care Personnel Registry	01 DHR 2148	Mann	01/16/02
Gudrun Davis v. NC Dept. of Health and Human Services	01 DHR 2160	Wade	02/27/02
Woodbridge Alternative, Inc., Maxine Dunn v. Woodbridge Alternative DSS, Elizabeth Brantley	01 DHR 2396	Lassiter	02/21/02
Gloria Jean Hairston v. Health Care Personnel Registry	02 DHR 0072	Chess	03/04/02
Bonner Family Childcare Ctr. v. NC DHHS, Arnett Cowan	01 DHR 0090	Chess	03/07/02
Division of Child Development			
Linda Thurman v. NC DHHS, Div. of Child Development	99 DHR 1695	Wade	02/04/02
Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01

¹ Combined Cases

CONTESTED CASE DECISIONS

Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01	
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	
Anna Daley v. DHHS, Div. of Child Development	01 DHR 0386	Morrison	11/07/01	
Tiffany D. Lott v. Div. of Child Dev., NC DHHS	01 DHR 0538	Chess	12/10/01	
Sarah L Thomas, Sarah's Child Care v. Division of Child Dev.	01 DHR 0818 ²	Gray	12/28/01	
Sarah's Child Care Center, Inc. v. NC DHHS, Div. of Child Dev.	01 DHR 0830 ²	Gray	12/28/01	
Blackwell and Assoc. & Alamance Child Learning Center v. NC DHHS Div. of Child Development	01 DHR 1281	Chess	02/06/02	
Division of Medical Assistance				
Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01	
Dr. Mitchell James Lequire, PharmD Realo Drug v. DHHS, Division of Medical Assistance	01 DHR 0989	Chess	07/12/01	
Division of Facility Services				
Donna Kay Pittman v. DHHS, Division of Facility Services	00 DHR 0086	Overby	06/29/01	
Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01	
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01	
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01	
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01	
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01	
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01	
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01	
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01	
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01	
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	
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01	
Tabitha Perry v. DHHS, Division of Facility Services	01 DHR 0330	Mann	10/01/01	16:09 NCR 858
Tonitia Langley v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01	
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01	
Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01	
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01	
Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01	
Arlene E Jackson v. DHHS, Division of Facility Services	01 DHR 0740	Morrison	07/11/01	
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01	
Daphne Michelle Pressley v. DHHS, Division of Facility Services	01 DHR 0863	Morrison	07/27/01	
Stephanie M. Propst v. DHHS, Div. of Facility Services, Health Care Personnel Section	01 DHR 0899	Wade	11/20/01	
Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01	
Madge B Murray v. NC DHHS, Div. of Facility Services, Health Care Personnel Registry	01 DHR 0953	Conner	09/12/01	
Margaret Rose Hiebler v. DHHS, Division of Facility Services	01 DHR 1002	Mann	10/02/01	
Chrishana Lindsay-Dixon v. DHHS, Division of Facility Services	01 DHR 1012	Mann	10/12/01	
Dannette Byrd v. Community Innovations, Health Care Personnel Registry	01 DHR 1016	Wade	11/20/01	
Genevieve McLean, McLean Family Care Home v. DHHS, Div. of Facility Services	01 DHR 1021	Conner	02/25/02	
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	
Brenda Garner v. DHHS, Division of Facility Services	01 DHR 1106 ⁹	Conner	01/24/02	
Cape Medical Transport, Inc., v. NC DHHS, Division of Facility Services	01 DHR 1160	Morrison	12/31/01	16:16 NCR 1860
Rossie Nicole Horne v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01	
Tiffany L Wilkerson v. NC DHHS, Div. of Facility Services (Rosemary H. Harrell, RN, BSN)	01 DHR 1279	Chess	09/07/01	
Dorothy J. Gilmore v. DHHS, Division of Facility Services	01 DHR 1295	Gray	12/04/01	
Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01	
Antonio Ray v. NC DHHS, Division of Facility Services	01 DHR 1344	Gray	09/24/01	
Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01	
Gloria Elaine Evans v. NC DHHS, Division of Facility Services	01 DHR 1403	Wade	02/04/02	
Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01	
Rex Hospital v. NC DHHS, Div. of Fac. Svcs., CON Section & Raleigh Heamtology Oncology, P.C. & Raleigh Radiation Oncology, P.C.	01 DHR 1446	Lassiter	03/11/02	
Mooreville Hosp. Management Assoc., Inc. d/b/a Lake Norman Regional Medical Center v. NC DHHS, Div. of Facility Svcs., CON Sec.	01 DHR 1455	Wade	03/07/02	
Annete Hill v. DHHS, Division of Facility Services	01 DHR 1514	Conner	01/24/02	
Alice G. Stevenson v. NC DHHS, Division of Facility Services	01 DHR 1567	Mann	12/13/01	
Anne Marie Lunsford v. NC DHHS, Division of Facility Services	01 DHR 1590	Gray	02/19/02	
Lasonya Jean Clark v. NC DHHS, Division of Facility Services, Health Care Personnel Registry Section	01 DHR 1593	Gray	02/18/02	
Caroline Peck Whitaker v. NC DHHS, Division of Facility Services	01 DHR 1595	Gray	12/28/01	
Joseph C. Turay v. DHHS, Division of Facility Services	01 DHR 1617	Elkins	01/29/02	
Desiree Scales v. DHHS, Division of Facility Services	01 DHR 1621	Conner	11/26/01	
Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01	

² Combined Cases
⁹ Combined Cases

CONTESTED CASE DECISIONS

Archie Kelly McNeilly v. NC DHHS, Division of Facility Services	01 DHR 1772	Gray	02/08/02
Brenda Garner v. DHHS, Division of Facility Services	01 DHR 1809 ³	Conner	01/24/02
Vieta Ann Jamison v. DHHS, Division of Facility Services	01 DHR 1907	Chess	01/30/02
April Michelle McGuire v. NC DHHS, Division of Facility Services	01 DHR 1935	Elkins	12/13/01
Elizabeth Winter v. DHHS, Division of Facility Services	01 DHR 1954	Chess	01/17/02
Angela Roberson v. DHHS, Division of Facility Services	01 DHR 2215	Lassiter	01/07/02
Lisa Marie Burleson v. DHHS, Division of Facility Services	01 DHR 2345	Morrison	02/05/02
Affiah, Ndarake Effiong v. NC DHHS, Div. of Facility Svcs., Health Care Registry Section	01 DHR 2353	Conner	02/26/02
Lanella McRae v. DHHS, Division of Facility Services	02 DHR 0065	Gray	02/22/02

Division of Social Services

Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01
Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01
Claire Diggs v. DHHS, Moore Co. Dept. of Social Services	01 DHR 0551	Elkins	08/02/01
Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01
John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01
Judy P Miller v. Ashe Co. Dept. of Social Services, NC DHHS, Division of Facility Services, Health Care Personnel Registry	01 DHR 1363	Gray	09/18/01

Child Support Enforcement Section

A list of Child Support Decisions may be obtained by accessing the OAH Website – www.ncoah.com/decisions

ADMINISTRATION

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01
Sara E Parker v. GACPD	01 DOA 1606	Lassiter	03/04/02

JUSTICE

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01
--	-------------	------	----------

Alarm Systems Licensing Board

Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01
Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01
Arthur Eugene Corpening v. Alarm Systems Licensing Board	01 DOJ 0789	Morrison	06/13/01
Donny Lamor Phillips v. Alarm Systems Licensing Board	01 DOJ 0997	Lassiter	07/24/01
Stephen Wayne Farmer v. Alarm Systems Licensing Board	01 DOJ 0998	Lassiter	07/24/01
Lisa Nichols Caviness v. Alarm Systems Licensing Board	01 DOJ 1258	Conner	10/08/01
Benjamin Sabbath Krizon v. Alarm Systems Licensing Board	01 DOJ 1303	Conner	09/14/01
Michael Bullard v. Alarm Systems Licensing Board	01 DOJ 1310	Gray	10/30/01
James Kevin Hightower v. Alarm System Licensing Board	01 DOJ 1351	Gray	10/12/01
Telzy T. Porter v. Alarm System Licensing Board	01 DOJ 1496	Elkins	11/19/01
Francis Hoi Chan v. Alarm System Licensing Board	01 DOJ 1497	Chess	01/02/02
Julio Eduardo Riofrio v. Alarm System Licensing Board	01 DOJ 1814	Morrison	12/06/01
Robert A. Phelps v. Alarm System Licensing Board	01 DOJ 1815	Morrison	12/06/01
Tony Legrand Reid v. Alarm System Licensing Board	01 DOJ 1816	Morrison	02/13/02
Morgan Andrew Glenn v. Alarm System Licensing Board	01 DOJ 1855	Morrison	02/13/02
Edward Phillip Singler v. Alarm System Licensing Board	01 DOJ 2217	Wade	02/21/02
Michael William Rich v. Alarm System Licensing Board	02 DOJ 0025	Morrison	02/13/02

16:10 NCR 947

Private Protective Services Board

Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01
Emar I. Ifediora v. Private Protective Services Board	01 DOJ 0823	Conner	10/16/01
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01
Calvin McNair v. Private Protective Services Board	01 DOJ 1000	Lassiter	07/03/01
Michael David Faris v. Private Protective Services Board	01 DOJ 1271	Gray	10/12/01
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01
Johnny Randolph Clark v. Private Protective Services Board	01 DOJ 1509	Wade	12/27/01
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01
Tamera Ramelle Adams v. Private Protective Services Board	01 DOJ 1817	Morrison	12/06/01
Marsha Lynn Marshall v. Private Protective Services Board	01 DOJ 1856	Morrison	12/06/01
Lonnie Mack Maines, Jr. v. Private Protective Services Board	01 DOJ 1985	Morrison	12/11/01
Timothy Ray Robinson v. Private Protective Services Board	01 DOJ 2216	Wade	12/27/01
John C Bilyk, Jr. v. Private Protective Services Board	01 DOJ 2218	Morrison	03/14/02

Sheriffs' Education & Training Standards Commission

Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01
Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01
Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1577	Gray	08/27/01
Darrick Harris v. NC Sheriffs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01
Alan Henry Roebuck v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0444	Gray	11/30/01
Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0470	Gray	10/11/01
Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm.	01 DOJ 0478	Morrison	11/08/01
Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0500	Gray	10/12/01
Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0557	Conner	11/07/01
James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0616	Wade	08/29/01

CONTESTED CASE DECISIONS

Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 0650	Gray	09/28/01	
Donna Ingold Hatley v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 1142	Chess	01/30/02	
Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1267	Chess	10/04/01	
Stephen Charles Conely v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1588	Morrison	03/08/02	
William T. Young v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1600	Wade	02/27/02	
Kevin Hoover v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1601	Elkins	12/04/01	
Darius Zeb Brevard, Jr. v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 2309	Wade	02/27/02	

DEPARTMENT OF STATE TREASURER

Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems	00 DST 0727	Mann	08/06/01	
Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System	00 DST 0776	Gray	07/06/01	16:04 NCR 384

STATE BOARD OF EDUCATION

Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education	00 EDC 2119	Elkins	11/07/01	16:12 NCR 1252
Carolyn H. Lancaster v. NC Department of Public Instruction	01 EDC 0054	Morrison	11/08/01	
Bobby E Hart v. Superintendent Cumberland Co. Sch., Rockfish Elem.	02 EDC 0106	Mann	02/18/02	
Dr. Monroe R Parker, Esq., v. Brock Murray & NC Dept. of Public Inst.	02 EDC 0261	Gray	03/13/02	

ENVIRONMENT AND NATURAL RESOURCES

James W and Winnifred King v. Div. of Coastal Management	97 EHR 0791	Gray	11/29/01	16:14 NCR 1618
Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01	
Hawley Farms, Inc. v. NC DENR, Div. of Water Quality	99 EHR 1740	Conner	10/25/01	
Holly Ridge Associates, LLC, v. NC DENR and its Div. of Land Resources, William P. Holman, Sec. of the DENR, in his official Capacity and Charles H. Gardner, Director of the Div. of Land Resources, in his official capacity	00 EHR 0423	Conner	12/20/01	16:16 NCR 1825
Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0438	Conner	08/17/01	
Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0439	Conner	08/17/01	
Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01	
Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0441	Conner	08/17/01	
Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0448	Conner	08/17/01	
Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0449	Conner	08/17/01	
Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0450	Conner	08/17/01	
Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0501	Conner	08/17/01	
Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0508	Conner	08/17/01	
Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0509	Conner	08/17/01	
Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0510	Conner	08/17/01	
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	
Angela & Larry Freeman v. Brunswick Co. Health Department	00 EHR 0635	Conner	11/29/01	
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01	
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ³	Gray	08/07/01	16:05 NCR 463
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR 40
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR 1043
Acreege Brokers, Inc., Doug Golightly, Officer, James T. Gully Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR 463
Albert Galluzzo, James T. Gully, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 69 +1/2 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 ¹	Gray	08/07/01	16:05 NCR 463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR 463

3 Combined Cases

CONTESTED CASE DECISIONS

Health Department						
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR	463	
Health Department						
David T. Stephenson v. NC DENR, Lot 66						
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484	
S. Adrian Becton v. NC DENR	00 EHR 1358	Chess	01/15/02			
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01			
Thomas Tilley, Trustee v. NC DENR	00 EHR 1668	Elkins	11/28/01			
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 ⁶	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ³	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ³	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ³	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ³	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ³	Gray	08/07/01	16:05 NCR	463	
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01			
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01			
Paul J Williams v. NC Dept.of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01			
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01			
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01			
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01			
Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01			
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	
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01			
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01			
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01			
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01			
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			
Mercer Glass v. NC DENR						
Nancy D. Tuchscherer v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 0935	Conner	09/11/01			
James A Brown v. NC DENR	01 EHR 0992	Gray	11/28/01	16:14 NCR	1634	
Vickie Jacobs Little v. Brunswick County Health Department	01 EHR 1197	Elkins	09/17/01			
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1298	Mann	11/30/01			
John (Jack) W. Henry v. DENR, Env. Health Services Section	01 EHR 1313	Chess	10/22/01			
Albert Eric Pickett v. NC DENR	01 EHR 1322	Conner	12/14/01			
Elfreda G. Shepard v. NC DENR, Division of Coastal Management	01 EHR 1332	Elkins	11/30/01			
Town of Murfreesboro v. NC DENR, Div. of Waste Management	01 EHR 1390	Conner	11/28/01			
Peter Pallas v. New Hanover County Board of Health	01 EHR 1424	Wade	01/10/02			
NC Real Estate Services Corp. v. NC DENR, Div. of Air Quality	01 EHR 1441	Conner	01/09/02			
Nucor Steel v. NC DENR, Div. of Air Quality	01 EHR 1503	Elkins	11/20/01			
Thomas M Alphin v. NC DENR, Div. of Water Quality	01 EHR 2199	Lassiter	03/19/02			
	02 EHR 0178	Chess	03/07/02			

ENGINEERS AND LAND SURVEYORS

NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01			
--	-------------	--------	----------	--	--	--

OFFICE OF INFORMATION TECHNOLOGY

Spli-Con, LLC v. NC Office of Information Technology	01 GOV 1799	Chess	11/26/01			
--	-------------	-------	----------	--	--	--

HUMAN RELATIONS COMMISSION

NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01			
NC Human Relations Commission on behalf of Janie Teele v. Wedco Enterprises, Inc., Quality Construction, Inc., The Apartment Group, Erin Banks, and Terry Taylor	00 HRC 1449	Gray	12/21/01			
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01			

DEPARTMENT OF INSURANCE

Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01			
Granite State Ins. Company v. NC Department of Insurance	02 INS 0288	Gray	03/13/02			

LICENSING BOARD FOR GENERAL CONTRACTORS

NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01			
--	-------------	--------	----------	--	--	--

MISCELLANEOUS

Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01			
Donald Jason Biles v. W-S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01			
Sara E. Parker v. Medical Review of North Carolina	01 MIS 1607	Lassiter	12/03/01			
Sara E. Parker v. Administrative Office of the Courts	01 MIS 1608	Lassiter	12/03/01			
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01			

CONTESTED CASE DECISIONS

James E Price v. College of the Albemarle & NC Comm. College Sys.	01 MIS 0122	Conner	03/06/02	
OFFICE OF ADMINISTRATIVE HEARINGS				
James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01	
OFFICE OF STATE PERSONNEL				
Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01	
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01	
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01	
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01	
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01	
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director,	00 OSP 0345	Lassiter	07/03/01	
NC Dept. of Crime Control & Public Safety				
Dennis Joyner v. Off. of Juvenile Justice, 7 th Judicial District	00 OSP 0424 ¹⁰	Reilly	02/05/02	
Ricky E Yates v. NC Department of Correction	00 OSP 0453	Gray	01/31/02	16:17 NCR 0000
Victor Garnett v. Dept. of Correction, Craven Correctional Inst.	00 OSP 0722	Elkins	01/11/02	16:17 NCR 0000
Isaac Randall Hall, Jr. v. NC Dept. of St. Treasurer, Ret. Sys. Div.	00 OSP 0760	Wade	02/27/02	
Tina C. Lowery v. NC DOC/Craven Correctional Institution	00 OSP 0767	Conner	11/28/01	
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	
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01	16:06 NCR 550
Warren E. Pigott v. NC Department of Correction	00 OSP 1096	Gray	11/26/01	
Andora Taylor Hailey v. NC Department of Correction	00 OSP 1247 ⁵	Conner	11/26/01	
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01	
Stephen E Dunn v. NC Department of Correction	00 OSP 1693	Morgan	01/23/02	
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 1702 ⁸	Gray	12/31/01	16:16 NCR 1853
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR 271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01	
Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01	
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 2117 ²	Gray	12/31/01	16:16 NCR 1853
Andora Taylor Hailey v. NC Department of Correction	00 OSP 2180 ⁵	Conner	11/26/01	
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01	
Leonard Eugene Leak v. NC Dept. of Correction	01 OSP 0020	Gray	02/25/02	
Deanna Kay Sadler v. NC Department of Transportation	01 OSP 0097	Gray	01/28/02	
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01	
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01	
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR 864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01	
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01	
Valerie Thompson Enoch v. Alamance Co. Dept. of Social Services	01 OSP 0316	Lassiter	11/29/01	
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01	
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01	
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01	
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01	
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01	
Dennis Joyner v. Off. of Juvenile Justice, 7 th Judicial District	01 OSP 0643 ²	Reilly	02/05/02	
Marianne E Moss v. NC Dept. of Health & Human Services	01 OSP 0778	Conner	02/15/02	
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01	
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01	
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01	
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01	
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01	
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01	
Nadine H Ward v. North Carolina State University	01 OSP 0862	Gray	01/31/02	
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01	
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01	
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01	
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	
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01	
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01	
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	12/19/01	
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01	
Craig B Hilliard v. NC Department of Correction	01 OSP 1214	Morrison	12/18/01	
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01	
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01	16:12 NCR 1263
Dennis Damon Foster v. NC Department of Correction	01 OSP 1283	Chess	12/07/01	
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01	
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01	
Jerry Lee Glover v. Gary Miller, NC Dept. of Corrections	01 OSP 1365	Elkins	03/08/02	

5 Combined Cases
8 Combined Cases

CONTESTED CASE DECISIONS

Berton Hamm v. Eastern Adolescent Treatment Center	01 OSP 1397	Chess	01/14/02
Dorothy L. Stinson v. Gaston-Lincoln Area Mental Health "Pathways"	01 OSP 1400	Chess	12/12/01
Gloria E. Morrow v. NC Division of Social Services	01 OSP 1439	Elkins	12/18/01
Walter Daniel Giese v. George O' Daniel & the Onslow Co. Health Dept.	01 OSP 1445	Conner	12/17/01
Annie Karampatos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01
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
Gregory S. Harmon v. NC Department of Revenue	01 OSP 1575	Mann	01/18/02
Carl L Cobb v. Walter W Stelle PhD, Dorothea Dix Hosp. - DHHS	01 OSP 1699	Lassiter	02/15/02
Tammy M. Snipes v. DHHS, (Broughton Hospital)	01 OSP 1873	Chess	01/16/02
Lillie Joyce Blount v. Caswell Center, Human Resources Employee, Clifton Jones, Supervisor	01 OSP 1898	Lassiter	12/04/01
James J. Lewis v. NC Dept. of Correction	01 OSP 1933 ⁴	Mann	03/13/02
James J. Lewis v. NC Dept. of Correction	01 OSP 1951 ¹⁶	Mann	03/13/02
Sheila Nickerson v. UNC-CH	01 OSP 2016	Lassiter	01/02/02
Rebecca Jane Babaoff v. Buncombe Co. DSS, Asheville, NC	01 OSP 2096	Chess	03/04/02
Elana B Brown v. NC A & T State University	01 OSP 2177	Gray	03/05/02
Mark Thomas v. John Umstead Hospital	01 OSP 2180	Mann	02/05/02
Mary Hood Fletcher v. The University of North Carolina at Charlotte	01 OSP 2210	Lassiter	01/15/02
Carolyn Cook Evans v. NC A & T State University	01 OSP 2233	Gray	03/05/02
Elizabeth Hall Austin v. University of North Carolina at Charlotte	01 OSP 2338	Mann	02/07/02
Nona W Hubbard v. Div. of Comm. Corrections, Frank Davis, Donna Stone and Jerry Wilson	02 OSP 0084	Lassiter	03/04/02
Vernestine Speller Melton v. Bertie Co. Partnership for Children, Board of Directors, Patricia Ferguson, Chair	02 OSP 0236	Gray	03/21/02
Jesse C Whitaker v. University Towers (Student Dining Svc.) Glendora	02 OSP 0108	Gray	02/22/02
<u>DEPARTMENT OF REVENUE</u>			
George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02
<u>SECRETARY OF STATE</u>			
Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01
<u>UNIVERSITY OF NORTH CAROLINA</u>			
Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01
Phyllis Green v. The UNC Hospitals at Chapel Hill	01 UNC 1354	Gray	11/26/01
<u>WELL CONTRACTORS</u>			
Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01

⁴ Combined Cases