

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 17, Issue 5
Pages 410 - 462

September 3, 2002

This issue contains documents officially filed through August 12, 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. EXECUTIVE ORDERS
Executive Orders 23 - 25.....410 - 412

II. IN ADDITION
Voting Rights Letters416 - 418
ENR – Applications for Innovative Approval of a Wastewater System for On-Site Subsurface Use...413 - 415
Note from the Codifier419

III. RULE-MAKING PROCEEDINGS
Health and Human Services
MHDDSAS.....420
Secretary for the Department of HHS.....420
Labor
Mine and Quarry420 - 421
OSHA421

IV. PROPOSED RULES
Environment and Natural Resources
Wildlife Resources Commission.....431 - 433
Health and Human Services
Facility Services.....431
Health Services, Commission for433 - 434
Medical Care Commission.....422 - 431
Licensing Boards
Certification Board for Substance Abuse
Professionals447 - 449
Secretary of State
Securities Division434 - 442
Transportation
Motor Vehicles, Division of.....442 - 444
Treasurer
Health & Wellness Trust Fund.....444 - 447

V. TEMPORARY RULES
Licensing Boards
Locksmith Licensing Board451 - 455
Transportation
Motor Vehicles, Division of.....450 - 451

VI. RULES REVIEW COMMISSION.....456 - 459

VII. CONTESTED CASE DECISIONS
Index to ALJ Decisions460 - 462

VIII. CUMULATIVE INDEX 1 - 69

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	Locksmith Licensing Board	29
*21	Occupational Licensing Boards	Massage & Bodywork Therapy	30
22	Administrative Procedures (Repealed)	Marital and Family Therapy	31
23	Community Colleges	Medical Examiners	32
24	Independent Agencies	Midwifery Joint Committee	33
25	State Personnel	Mortuary Science	34
26	Administrative Hearings	Nursing	36
27	NC State Bar	Nursing Home Administrators	37
28	Juvenile Justice and Delinquency	Occupational Therapists	38
	Prevention	Opticians	40
		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.

**EXECUTIVE ORDER NUMBER 23
AMENDING EXECUTIVE ORDER NUMBER 7
CONCERNING TEACHER ADVISORY COMMITTEE**

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

Section 1 of Executive Order No. 7 issued by Michael F. Easley on July 6, 2001, is hereby amended as follows:

Section 1. Establishment.

There is hereby established a Teacher Advisory Committee ("Committee"). The Committee shall be composed of up to twenty members appointed by the Governor. The North Carolina Teacher of the Year shall serve *ex officio*. As determined by the Chairman of the Committee, one half of the current members terms are extended for six months and the other half of the current members terms are extended for one year. Hence forth, newly appointed members of the Committee shall serve two-year terms. Members may be reappointed. The Governor shall also appoint the Chair.

Except as amended herein, all provisions of Executive Order No. 7 shall remain in full force and effect.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 18th day of July, 2002.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 24
ACCELERATING TEACHER RECRUITMENT AND
HIRING FOR MORE AT FOUR AND CLASS SIZE
REDUCTION IN LIGHT OF JUDICIAL
REQUIREMENTS, BUDGET DEVELOPMENTS, AND
IMPENDING SCHOOL OPENINGS**

In September 2001, the General Assembly ratified and I, as Governor, signed a budget for the State of North Carolina that allocated funds to establish a pre-kindergarten program for at-risk children, known as *More at Four*, and to reduce class sizes.

Pre-kindergarten programs for at-risk children and class size reduction are necessary for improving educational opportunity and outcomes for children across North Carolina. In addition, these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap,

reducing the State's persistently high dropout rate, increasing college enrollments, and meeting other education challenges.

Moreover, improving public education is the key to a better-prepared workforce that is able to attract quality jobs, strengthen our economy, and improve the quality of life for all citizens.

The current proposed House Budget includes expanded funding for *More at Four* and class size reduction. While the General Assembly continues working to ratify a final budget I can sign, the school year for the majority of North Carolina's children will start imminently.

In addition, the school funding lawsuit, known as *Leandro*, has now reached a crisis point.

Nearly two years ago, in October 2000, the Superior Court Judge assigned by the Supreme Court of North Carolina to oversee *Leandro* ordered that pre-kindergarten educational programs for at-risk children must be expanded to serve all of the at-risk children in North Carolina that qualify for such programs.

Three months ago, in April 2002, the Court explicitly re-affirmed the October 2000 judgment with regards to pre-kindergarten programs. In addition, the April ruling found that at-risk children need smaller classes in early grades and that every classroom provide differentiated, individualized instruction. Such individual attention, of course, requires smaller class sizes.

On July 19, 2002, the Court made clear that the prior judgments, including the mandates of *More at Four* and individualized instruction in early grades, remained in effect and were not being complied with.

NOW THEREFORE, in light of the factual circumstances set forth above, and under the legal authority vested in me as Governor by Article III of the Constitution of North Carolina, N.C.G.S. § 143-23, and decisions by the Supreme Court of North Carolina interpreting N.C.G.S. § 143-23, I hereby AUTHORIZE and INSTRUCT:

- (1) The Director of the *More at Four* Pre-Kindergarten Program, in conjunction with the Co-Chairs of the *More at Four* Task Force (the Superintendent of Public Instruction and the Secretary of the Department of Health and Human Services), to recruit the teachers necessary to expand the program; and,
- (2) The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the additional teachers necessary to reduce class sizes in kindergarten and first grade beginning with the 2002-03 school year.

EXECUTIVE ORDERS

This Executive Order is effective July 24, 2002.

Done in the Capital City of Raleigh, North Carolina, this 24th day of July 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 25
NORTH CAROLINA SHOWCASE STATE
PARTNERSHIP FOR NATURAL DISASTER
RESISTANCE AND RESILIENCE**

WHEREAS, the State of North Carolina is vulnerable to hurricanes, flooding, winter storms, hail, drought, earthquakes, tornadoes, wildfire and other natural hazards that have resulted in the loss of life, economic distress, and have caused billions of dollars in damages; and

WHEREAS, since 1996, North Carolina has experienced the two most costly natural disasters in the State’s history, hurricanes Fran and Floyd, resulting in the deaths of over 50 people and causing over three billion and five billion dollars in losses respectively; and

WHEREAS, North Carolina is presently experiencing a state and local government budget crisis, due in part by lost tax revenues and cash expenditures associated with several recent disasters, and

WHEREAS, North Carolina is experiencing rapid growth in known high-hazard areas; and

WHEREAS, North Carolina has embarked on a nationally recognized effort to reduce the future impacts of natural hazards, including the acquisition and elevation of over 6,000 flood-prone residences, the initiation of a statewide mitigation planning effort, the re-mapping of the State’s floodplains, and the establishment of the Blue Sky Foundation, a nonprofit organization dedicated to educating the public about risk reduction techniques that can be incorporated into new or existing construction; and

WHEREAS, North Carolina seeks to further ongoing risk reduction efforts through an expansion of public and private partnerships utilizing the framework established by the Institute for Business & Home Safety titled the “Showcase State for Natural Disaster Resistance and Resilience”; and

WHEREAS, North Carolina Showcase State partners currently include the North Carolina Department of Crime Control and Public Safety , the Blue Sky Foundation of North Carolina, Inc., The North Carolina Department of Insurance, Nationwide Insurance, Royal & SunAlliance Insurance, State

Farm Fire and Casualty Company, the Institute for Business & Home Safety, the Independent Agents Association of North Carolina, the University of North Carolina at Chapel Hill; Department of City and Regional Planning, the North Carolina State University Cooperative Extension Service, the North Carolina League of Municipalities, , Land’s End Development Companies, Rufty Homes, Inc., Old Station Corporation/Sykes Construction, Carolinas Concrete Masonry Association, North Carolina Sea Grant, the Federal Emergency Management Agency, and North Carolina Baptist Men, with the intention of including local governments and the business community; among others; and

WHEREAS, the Showcase State Initiative will provide the catalyst to bring together state and federal agencies, nonprofit organizations, local governments, developers, insurers, financiers, and the business community to seek creative ways to comprehensively address the rapid increase in our State’s vulnerability to natural hazards and share the burden of mitigating the risk in cost-effective ways; and

WHEREAS, since there are significant efforts underway that address many of the initiatives below, by government, the private and nonprofit sectors, a collaborative process that fosters leveraged resources and shared knowledge will allow partners to extend better service to more citizens of North Carolina.

NOW, THEREFORE I, Michael F. Easley, by virtue of the authority vested in me as the Governor of the State of North Carolina proclaim the State of North Carolina a “Showcase State for Natural Disaster Resistance and Resilience” as a means to further reduce the vulnerability of our citizens and the built environment to the risks associated with natural hazards. The state, working in collaboration with its Showcase State partners, and to the extent to which existing state budgetary and staff resources allow, will work on the following initiatives:

1. Identify government agencies, private sector and nonprofit entities responsible and accountable for implementing actions of each of the areas listed below. Executives with authority and accountability in these areas will coordinate their respective planning and develop a collaborative five-year strategy together, with one-year action plans.
2. Conduct a statewide hazard identification and risk assessment for all natural hazards in our state, including providing the assistance and training to local governments needed to undertake jurisdictional-level assessments.
3. Develop partnerships between stakeholder businesses and the public sector to identify mitigation opportunities and better coordinate preparedness, response and recovery activities. Partnerships should include critical businesses involved in disaster recovery operations (e.g., utilities, communications, transportation, food/water suppliers, and medical facilities) and those businesses whose losses would impact the ability of the local and state economy to recover.
4. Promote and support the adoption and enforcement of a current model code by the state and promote the voluntary

EXECUTIVE ORDERS

code-plus *Fortified. . . for Safer Living* program for new construction.

prevent or reduce property damages as a result of a natural disaster event.

5. Encourage the use of state and local hazard risk assessments to inform land use decisions, particularly those that place people and structures in harm's way.
6. Maintain a state hazard mitigation plan, develop a disaster recovery plan and provide technical assistance to local governments to assist in the development of Hazard Mitigation Plans as required under the Disaster Mitigation Act of 2000 and North Carolina SC 2001-214.
7. Ensure that local governments are given the information needed to make an informed decision regarding participation in the National Flood Insurance Program, including the implications for disaster assistance stated in SC 2001-214. Encourage participation in the National Flood Insurance Program and ensure compliance among participants. Promote and support participation in the National Flood Insurance Program's Community Rating System.
8. Incorporate disaster protection into capital improvement budgets of public lifelines and critical facilities, such as utilities, telecommunication systems, transportation infrastructure, water supply, hospitals, wastewater treatment facilities, etc. and promote incorporation of disaster protection into capital improvements of similar private facilities.
9. Encourage the development of a disaster-resistant state, including the encouragement of disaster-resistant communities within the State, in collaboration with the Blue Sky Foundation's *Exemplary Community* initiative, NC Division of Emergency Management's *Hazard Mitigation Planning Initiative (HMPI)* and the Federal Emergency Management Agency's disaster-resistant community initiatives.
10. Develop public outreach and awareness programs on the importance of mitigating damages caused by natural disasters and provide information on how citizens can

11. Support the appropriate incorporation of natural hazard awareness and reduction programs and information into school and college curricula.
12. Support the Institute for Business & Home Safety and its partners in the nonstructural retrofit of nonprofit childcare centers through cooperative public information efforts.
13. Conduct training for local government officials, state agencies, builders and other design professionals regarding the use of mitigation techniques in land use and building construction decisions. Encourage best practices above and beyond building code requirements.
14. Identify specific incentives and disincentives for implementing mitigation measures in the areas of regulation, policy, social values, and in the economic and environmental sectors.
15. Continue support of the North Carolina Mapping Initiative in its efforts to re-map the State's floodplains.

Implementation of this order shall be undertaken through the collaboration of Blue Sky Foundation of North Carolina, Inc. and the North Carolina Division of Emergency Management.

This Executive Order shall take effect immediately.

Done in the Capital City of Raleigh, North Carolina, this the 25th day of July, 2002.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

Notice of Application for Innovative Approval of a Wastewater System for On-Site Subsurface Use

Application by: Robert B. Mayer, P.E.
American Manufacturing Company, Inc.
Manassas, VA 20108-0549
1-800-345-3132
Fax: (703) 754-0058
www.americanonsite.com

For: American Perc-Rite Subsurface Drip System

Pursuant to N.C.G.S. 130A-343(g), an application for innovative approval of a wastewater system, component, or device for on-site subsurface use has been filed with the North Carolina Department of Environment & Natural Resources (DENR)

The application may be reviewed by contacting the applicant or at 2728 Capital Blvd, Raleigh, N.C. 27604, On-Site Wastewater Section, Division of Environment Health. Proposed action on the application by DENR can be viewed on the On-Site Wastewater Section website: www.deh.enr.state.nc.us/oww/.

Written public comments may be submitted to DENR within 30 days of the date of this Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Steve Steinbeck, Head, Enforcement and Special Projects of Environmental Health, 1642 Mail Service Center, Raleigh, NC 27699-1642 or steve.steinbeck@ncmail.net or Via Fax @ 919-715-3227. Written comments received by DENR in accordance with this notice will be taken into consideration prior to final agency decision of the Innovative Subsurface Wastewater System application.

Notice of Application for Innovative Approval of a Wastewater System for On-Site Subsurface Use

Application by: Dick Bachelder
PSA, Inc
P.O. Box 3000
Hilliard, OH 43026
1-800-735-7473
Fax: 614-658-0204
www.ads-pipe.com

For: "Bio Diffuser" chambered sewage effluents subsurface disposal system.

Pursuant to N.C.G.S. 130A-343(g), an application for innovative approval of a wastewater system, component, or device for on-site subsurface use has been filed with the North Carolina Department of Environment & Natural Resources (DENR)

The application may be reviewed by contacting the applicant or at 2728 Capital Blvd, Raleigh, N.C. 27604, On-Site Wastewater Section, Division of Environment Health. Proposed action on the application by DENR can be viewed on the On-Site Wastewater Section website: www.deh.enr.state.nc.us/oww/.

Written public comments may be submitted to DENR within 30 days of the date of this Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Steve Steinbeck, Head, Enforcement and Special Projects of Environmental Health, 1642 Mail Service Center, Raleigh, NC 27699-1642 or steve.steinbeck@ncmail.net or Via Fax @ 919-715-3227. Written comments received by DENR in accordance with this notice will be taken into consideration prior to final agency decision of the Innovative Subsurface Wastewater System application.

Notice of Application for Innovative Approval of a Wastewater System for On-Site Subsurface Use

Application by: On-Site Wastewater Section
 Division of Environment Health
 1642 Mail Service Center
 Raleigh, NC 27699-1642

For: Approval of Tire Chips as an aggregate substitute in Subsurface Wastewater Systems

Pursuant to N.C.G.S. 130A-343(g), an application for innovative approval of a wastewater system, component, or device for on-site subsurface use has been filed with the North Carolina Department of Environment & Natural Resources (DENR)

The application may be reviewed by contacting the applicant or at 2728 Capital Blvd, Raleigh, N.C. 27604, On-Site Wastewater Section, Division of Environment Health. Proposed action on the application by DENR can be viewed on the On-Site Wastewater Section website: www.deh.enr.state.nc.us/oww/.

Written public comments may be submitted to DENR within 30 days of the date of this Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Steve Steinbeck, Head, Enforcement and Special Projects of Environmental Health, 1642 Mail Service Center, Raleigh, NC 27699-1642 or steve.steinbeck@ncmail.net or Via Fax @ 919-715-3227. Written comments received by DENR in accordance with this notice will be taken into consideration prior to final agency decision of the Innovative Subsurface Wastewater System application.

U.S. Department of Justice

Civil Rights Division

JDR:MSR:NT:nj:jdh
DJ 166-012-3
2002-2563
2002-3089

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

July 17, 2002

David A. Holec, Esq.
City Attorney
PO Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to 17 annexations (Ordinance Nos. 01-144 through 01-146, 02-03, 02-04, 02-09 through 02-15, 02-32, and 02-37 through 02-40) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on April 23 and May 28, 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 reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:JBG:HMM:nj:
DJ 166-012-3
2002-3141
2002-3216

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

July 24, 2002

George A. Weaver, Esq.
113 East Nash St., Suite 404
Wilson, NC 27893

Dear Mr. Weaver:

This refers to the polling place change and the realignment of voting precincts for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on May 30 and June 3, 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:RPL:DC:nj:
DJ 166-012-3
2002-3403

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

July 31, 2002

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

Dear Mr. Bartlett:

This refers to Session Law 2002-3 (Extra Session), which defers until the 2002 general election, the vote on a constitutional amendment relating to the dedication and acceptance of property into the State Nature and Historic Preserve, 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 June 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

Editor's Note: Approved Rules, Legislation to Disapprove Rules, Approved Rules with Fees

All rules approved by the Rules Review Commission from January 2001 through April 2002 have completed 30 legislative days. With the exceptions listed below, these rules will be effective on July 18, 2002 unless a later effective date was specified in the rule.

Pursuant to G.S. 150B-21.3, if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. A rule that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

Legislation has been introduced to disapprove the following rules:

Rule Citation:

15A NCAC 7H .0309
15A NCAC 18A .1301-.1302, .1304-.1324, .1327

Legislative Bill Cite:

H1540 introduced on June 6, 2002
H1777 introduced on July 17, 2002

Pursuant to G.S. 12-13.1, notwithstanding any other law, an agency's establishment or increase of a fee or charge shall not go into effect unless the General Assembly has enacted express authorization of the amount of the fee or charge or the General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased. The following rules have completed the rulemaking process and 30 legislative days. The rulemaking agency must consult with the Commission before these rules can take effect.

Agency

Insurance
Transportation/DMV
Dental Examiners
Dental Examiners
Electrical Contractors
Electrolysis Examiners
Plumbing, Heating and Fire Sprinkler Contractors
Professional Engineers and Land Surveyors
Real Estate Commission

Rule Citation

11 NCAC 08 .1332
19A NCAC 03J .0202 and .0502
21 NCAC 16Q .0204
21 NCAC 16Y .0102
21 NCAC 18B .0209 and .0404
21 NCAC 19 .0201 and .0622
21 NCAC 50 .1101, .1102, .1104
21 NCAC 56 .0502, .0505, .0606, and .0804
21 NCAC 58A .0503

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 14 – MENTAL HEALTH: GENERAL

Notice of Rule-making Proceedings is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services 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 14G .0100; 14V .0100, .3800. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 122C-3; 122C-26; 122C-142.1; 143B-147

Statement of the Subject Matter:
10 NCAC 14G .0100; 14V .0100 – Definition of requirements for qualified substance abuse prevention professionals.
10 NCAC 14V .3800 – Substance Abuse Services for DWI Offenders.

Reason for Proposed Action:
10 NCAC 14G .0100; 14V .0100 – The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services proposes to amend current professional requirements for staff to include qualifications of substance abuse staff providing prevention services. Prevention services are one of the core services of the public service system specified in S.L. 2001-437, an act to phase in the implementation of mental health system reform at the state and local levels.
10 NCAC 14V .3800 – The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services proposes to amend these rules to revise the organizational arrangement and more clearly specify the intent of the rule language.

Comment Procedures: Written comments may be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012. Telephone No. (919) 881-2446.

CHAPTER 14 – MENTAL HEALTH: GENERAL

Notice of Rule-making Proceedings is hereby given by Secretary for the Department of Health and Human Services 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 14V .0100-.0800. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 122C-112.1

Statement of the Subject Matter: General rules governing mental health, developmental disabilities and substance abuse services.

Reason for Proposed Action: The Secretary of the Department of Health and Human Services proposes to amend these rules to include the content and format of business plans as required by S.L. 2001-437, an act to phase in the implementation of mental health system reform at the state and local levels.

Comment Procedures: Written comments may be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 3012 Mail Service Center, Raleigh, NC 27699-3012. Telephone No. (919) 881-2446.

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 06 – MINE AND QUARRY

Notice of Rule-making Proceedings is hereby given by NC Department of Labor 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: 13 NCAC 06 .0309. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74-24.15; 150B

Statement of the Subject Matter: Statute of limitation for appeal of alleged discrimination against miners.

Reason for Proposed Action: Any miner or representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of the provisions of the Mine, Safety and Health Act may, within 30 day after such violation occurs, apply to the Commissioner of Labor for review of such alleged discharge or discrimination. The Department of Labor proposes to amend the time period for

RULE-MAKING PROCEEDINGS

appeal so that the rule reflects the amount of time provided for appeal under The Retaliatory Employment Discrimination Act (REDA).

Comment Procedures: All interested or potentially affected persons are encouraged to make their views known by submitting written comments to the attention of Barbara A. Jackson, General Council, NC Department of Labor, 4 W. Edenton St., Raleigh, NC 27601.

CHAPTER 07 - OSHA

Notice of Rule-making Proceedings is hereby given by the North Carolina Department of Labor 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: 13 NCAC 07A .0301 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-131; 95-133

Statement of the Subject Matter: The Department of Labor proposes to eliminate 13 NCAC 07A .0301(12), Parts (A), (B) and (C) because it has been determined that they duplicate 29 C.F.R. 1908 regulations as revised effective October 26, 2000.

Reason for Proposed Action: The Department of Labor proposes to eliminate 13 NCAC 07A .0301(12), Parts (A), (B) and (C) because it has been determined that they duplicate 29 C.F.R. 1908 regulations as revised effective October 26, 2000.

Comment Procedures: All interested and potentially affected persons are encouraged to make their views known by submitting written comments to the attention of Barbara A. Jackson, General Counsel, North Carolina Department of Labor, 4 West Edenton St., Raleigh, NC 27601.

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 Medical Care Commission intends to adopt the rule cited as 10 NCAC 03C .3111 and amend the rules cited as 10 NCAC 03C .3101 and .3104. Notice of Rule-making Proceedings was published in the Register on May 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 18, 2002

Time: 10:00 a.m.

Location: Room 113, Council Building, NC Division of Facility Services, 701 Barbour Dr., Dorothea Dix Campus, Raleigh, NC

Reason for Proposed Action: *The NC Medical Care Commission proposes to amend rules 10 NCAC 03C .3101, and .3104 and to adopt a new rule at 10 NCAC 03C .3111. If amended, rules 10 NCAC 03C .3101 and .3104 would limit licensure to only those facilities or premises within a single county and would limit the length of licensure to 12 months. If adopted, rule 10 NCAC 03C .3111 will permit hospitals to temporarily increase, with Division approval, its licensed bed capacity up to 10 per cent for a period not to exceed 60 consecutive days.*

Comment Procedures: *Written comments will be accepted through October 3, 2002, and should be directed to Mark Benton, Chief of Budget/Planning, Rule-making Coordinator, 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 03C - LICENSING OF HOSPITALS

SECTION .3100 – PROCEDURE

10 NCAC 03C .3101 GENERAL REQUIREMENTS

- (a) An application for licensure shall be submitted to the Division prior to a license being issued or patients admitted.
- (b) An existing facility shall not sell, lease or subdivide a portion of its bed capacity without the approval of the Division.
- (c) Application forms may be obtained by contacting the Division.

(d) The Division shall be notified in writing prior to the occurrence of any of the following:

- (1) addition or deletion of a licensable service;
- (2) increase or decrease in bed capacity;
- (3) change of chief executive officer;
- (4) change of mailing address;
- (5) ownership change; or
- (6) name change.

(e) Each application shall contain the following information:

- (1) legal identity of applicant;
- (2) name or names under which the hospital or services are presented to the public;
- (3) name of the chief executive officer;
- (4) ownership disclosure;
- (5) bed complement;
- (6) bed utilization data;
- (7) accreditation data;
- (8) physical plant inspection data; and
- (9) service data.

(f) A license shall include only facilities or premises within a single county.

Authority G.S. 131E-79.

10 NCAC 03C .3104 LENGTH OF LICENSE

Licenses shall remain in effect for up to 12 months until one of the following occurs:

- (1) Division imposes an administrative sanction which specifies license expiration;
- (2) change of ownership;
- (3) closure;
- (4) change of site;
- (5) failure to comply with Rule .3105 of this Section.

Authority G.S. 131E-79.

10 NCAC 03C .3111 TEMPORARY CHANGE IN BED CAPACITY

(a) A hospital may temporarily increase its bed capacity by up to 10 percent over its licensed bed capacity, as determined by the administrator, by utilizing observational beds for inpatients for a period of no more than 60 consecutive days following approval by the Division of Facility Services.

(b) To qualify for a temporary change in licensed capacity, the hospital census shall be at least 90 percent of its licensed bed capacity, excluding beds that are under renovation or construction, and the hospital must demonstrate conditions requiring the temporary increase that may include but are not limited to the following:

- (1) natural disaster;
- (2) catastrophic event; and
- (3) health epidemic.

PROPOSED RULES

(c) The Division may approve a temporary increase in licensed beds only if it is determined that:

- (1) The increase is not associated with a capital expenditure; and
(2) The hospital administrator certifies that the physical facilities to be used adequately safeguard the health and safety of patients. However this approval may be revoked if the Division determines, as a result of a physical site visit, that these safeguards are not adequate.

Authority G.S. 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to adopt the rules cited as 10 NCAC 03Q .1408-.1411, amend the rules cited as 10 NCAC 03Q .0103, .0202, .0402, .1202, .1403, .1405-.1407 and repeal the rule cited as 10 NCAC 03Q .1203. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 20, 2002

Time: 10:00 a.m.

Location: Room 201, Council Building, NC Division of Facility Services, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: The NC Medical Care Commission proposes to amend, adopt, and repeal permanent rules at 10 NCAC 03Q. This Section pertains to the licensure of ambulatory surgical facilities. The proposed rule changes would ensure that existing rules conform with current building code requirements and practices.

Comment Procedures: Written comments concerning this rule-making action must be submitted by September 20, 2002, 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 03Q - LICENSING OF AMBULATORY SURGICAL FACILITIES

SECTION .0100 - GENERAL

10 NCAC 03Q .0103 DEFINITIONS

As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Adequate" means, when applied to various areas of services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
(2) "AAAASF" means American Association for Accreditation of Ambulatory Surgery Facilities.
(3) "AAAHHC" means Accreditation Association for Ambulatory Health Care.
(2)(4) "Ancillary nursing personnel" means persons employed to assist registered nurses or licensed practical nurses in the care of patients.
(3)(5) "Anesthesiologist" means a physician whose specialized training and experience qualify him or her to administer anesthetic agents and to monitor the patient under the influence of these agents. For the purpose of these Regulations the term "anesthesiologist" shall not include podiatrists.
(4)(6) "Anesthetist" means a physician or dentist qualified by experience to administer anesthetic agents or a registered nurse qualified to administer anesthesia.
(5)(7) "Authority Having Jurisdiction" means the Division of Facility Services.
(6)(8) "Chief executive officer" or "administrator" means a qualified person appointed by the governing authority to act in its behalf in the overall management of the facility and whose office is located in the facility.
(7)(9) "Dentist" means a person who holds a valid license issued by the North Carolina Board of Dental Examiners to practice dentistry.
(8)(10) "Department" means the North Carolina Department of Human Resources.
(9)(11) "Director of nursing" means a registered nurse with supervisory and administrative ability who is responsible to the chief executive officer for supervision of nursing service for the entire facility at all times.
(10)(12) "Governing authority" means the individual, agency or group or corporation appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the ambulatory surgical facility is vested.
(13) "JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.
(14)(14) "Licensing agency" means the Department of Human Resources, Division of Facility Services.
(12)(15) "Licensed practical nurse" (L.P.N.) means any person licensed as such under the provisions of North Carolina General Statute 90-158.
(13)(16) "Nursing personnel" means registered nurses, licensed practical nurses and ancillary nursing personnel.

- ~~(14)~~(17) "Operating room" means a room in which surgical procedures are performed.
- ~~(15)~~(18) "Patient" means a person admitted to and receiving care in a facility.
- ~~(16)~~(19) "Person" means an individual, a trust or estate, a partnership or corporation, including associations, joint stock companies and insurance companies; the state, or a political subdivision or instrumentality of the state.
- ~~(17)~~(20) "Pharmacist" means a person who holds a valid license issued by the North Carolina Board of Pharmacy to practice pharmacy in accordance with North Carolina General Statute 90-61.
- ~~(18)~~(21) "Physician" means a person who holds a valid license issued by the North Carolina Board of Medical Examiners to practice medicine. For the purpose of carrying out these regulations, a "physician" may also mean a person holding a valid license issued by the North Carolina Board of Podiatry Examiners to practice podiatry.
- ~~(19)~~(22) "Qualified person" when used in connection with an occupation or position means a person:
 - (a) who has demonstrated through relevant experience the ability to perform the required functions; or
 - (b) who has certification, registration or other professional recognition.
- ~~(20)~~(23) "Recovery area" means a room used for the post anesthesia recovery of surgical patients.
- ~~(21)~~(24) "Registered nurse" means a person who holds a valid license issued by the North Carolina Board of Nursing to practice nursing as defined in North Carolina General Statute 90-158.
- ~~(22)~~(25) "Surgical suite" means an area which includes one or more operating rooms and one or more recovery rooms.

on December 31 of each year unless suspended, revoked, or renewed.

(c) The Department shall be notified at the time of:

- (1) any change as to the person who is the operator or owner of an ambulatory surgical facility;
- (2) any change of location;
- (3) any change as to a lease; and
- (4) any transfer, assignment or other disposition or change of ownership or control of 20 percent or more of the capital stock or voting rights thereunder of a corporation which is the operator or owner of an ambulatory surgical facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of such corporation which results in the ownership or control of more than 20 percent of the stock or voting rights thereunder of such corporation by any person.

A new application shall be submitted to the Department in the event of such a change or changes.

(d) The Department shall not grant a license until plans and specifications, which are stated in Section .1400 of this Subchapter, covering the construction of new buildings, additions, or material alterations to existing buildings are approved by the Department.

~~(e) No system of water supply, plumbing, sewerage, mechanical and electrical, and garbage or refuse disposal for these institutions shall be installed nor shall any such existing system be materially altered or extended until complete plans and specifications for the installation, alteration, or extension together with such information as the Department may require, have been submitted and approved by the Department.~~

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

(f) Submission of Plans:

- (1) Before construction is begun, 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 duplicate in order that the Division may distribute a copy to the Department of Insurance for review of the North Carolina State Building Code requirements.

Authority G.S. 131E-149.

SECTION .0200 - LICENSING PROCEDURES

10 NCAC 03Q .0202 REQUIREMENTS FOR ISSUANCE OF LICENSE

- (a) Upon application for a license from a facility never before licensed, a duly appointed representative of the Department shall make an inspection of that facility. Every building, institution or establishment for which a license has been issued shall be periodically inspected for compliance with the regulations of the Department. An ambulatory surgery facility shall be deemed to meet licensure requirements if the ambulatory surgery facility is accredited by JCAHCO, AAAHC or AAAASF. Accreditation does not exempt a facility from statutory or rule requirements for licensure nor does it prohibit the Department from conducting inspections as provided in this Rule to determine compliance with all requirements.
- (b) If the applicant has been issued a Certificate of Need and is found to be in compliance with the rules and regulations of the Department, then the Department shall issue a license to expire

Authority G.S. 131E-147; 131E-149.

SECTION .0400 - MEDICAL AND SURGICAL SERVICES

10 NCAC 03Q .0402 SURGICAL SERVICES

(a) The governing authority shall delineate surgical privileges for each physician and dentist performing surgery in accordance with criteria which it has established and ~~approved~~approved; ~~provided, however, that no physician or dentist may be given privileges to perform surgical procedures for which he or she does not have privileges to perform at the hospital with which the facility has a transfer agreement as provided in Rule .0403(a) of this Section.~~

(b) A roster of medical personnel having surgical and anesthesia privileges at the facility specifying the privileges and limitations of each, shall be readily obtainable by the person in charge of the surgical suite.

(c) The administrator or his designee shall maintain a chronological register of all surgical procedures performed. This shall include type of procedure performed, type of anesthesia used, personnel participating, post operative diagnosis and any unusual or untoward occurrence.

Authority G.S. 131E-149.

SECTION .1200 - FUNCTIONAL SAFETY

10 NCAC 03Q .1202 PREVENTIVE MAINTENANCE

A schedule of preventive maintenance shall be developed for all of the medical and surgical equipment in the ~~surgical suite facility~~ to assure satisfactory operation when needed.

Authority G.S. 131E-149.

10 NCAC 03Q .1203 DISASTER PREPAREDNESS

Area Designation

Temperature

Relative Humidity
Percent

Operating

70-~~76~~75° F* 21-24° C*

50-60

Recovery

~~75-80~~70-75° F* ~~24-27~~21-24° C*

30-60

*Variable Range Required

(2) For all other occupied or use areas, a minimum design temperature of 72°F. (22°C) at winter design conditions shall be provided.

(b) All air-supply and air-exhaust systems for the operating suite and recovery area shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown herein shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

(1) Outdoor intakes for operating rooms shall be located ~~as far as practical~~not less than 30 feet (9.14 m.) from exhausts from other ventilating systems, combustion equipment and plumbing vents and at least 3'-0" (.92 m.) above the ~~ground or roof~~roof and 6 feet (1.83 m.) above ground level.

~~(a) The facility shall have a posted plan for evacuation of patients, staff, and visitors in case of fire or other emergency.~~

~~(b) Fire drills~~

~~(1) At least one drill shall be held every six months to familiarize all employees with the drill procedure. Reports of the drills shall be maintained.~~

~~(2) Upon identification of procedural problems with regard to the drills, records shall show that corrective action has been taken.~~

Authority G.S. 131E-149.

SECTION .1400 - PHYSICAL PLANT CONSTRUCTION

10 NCAC 03Q .1403 SUPPORTING ELEMENTS

In addition to those areas covered in Rules .1401 and .1402 of this Section, the facility shall provide space for the following:

- (1) the receiving and registering of patients in privacy for obtaining confidential information;
- (2) waiting space with public toilets, public telephone, drinking fountain, and wheelchair storage; ~~and~~
- (3) preoperative preparation and post operative space for both males and females with dressing ~~rooms, patient lockers,~~ and toilet ~~facilities~~room facilities; and
- (4) secure storage for patients' personal effects.

Authority G.S. 131E-149.

10 NCAC 03Q .1405 MECHANICAL REQUIREMENTS

(a) Temperatures and Relative Humidity: Humidities

(1) The systems shall be designed to provide the temperature and humidities shown below:

- (2) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown herein.
- (3) All air supplied to operating rooms shall be delivered at or near the ceiling of the area served and all exhaust from the area shall be removed near floor level. At least two exhaust outlets shall be used in all operating rooms.
- (4) The bottom of any room supply air inlets, recirculation, and exhaust air outlets shall be located not less than 3 inches (7.62 cm.) above the floor.
- (5) Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust from corridors may be used to exhaust-ventilate bathrooms, toilet rooms, janitors' closets and small electrical or telephone closets opening directly on corridors.

PROPOSED RULES

- (6) All ventilation or air conditioning systems serving operating rooms shall have a minimum of two filter beds:
- (A) Filter bed No. 1 shall be located upstream of the air conditioning equipment and shall have a minimum efficiency of 25 percent. Filter bed No. 2 shall be downstream of the supply fan and of recirculating spray water and water reservoir-type humidifiers. Filter bed No. 2 shall have a minimum efficiency of 90 percent.
- (B) All filter efficiencies shall be certified by an independent testing agency and shall be based on the atmospheric dust spot efficiency determination in accordance with ASHRAE Standard 52-68; except that the exhausts from all laboratory hoods in which infectious or radioactive materials are processed shall be equipped with filters having a 99 percent efficiency based on the DOP (dioctyophthalate) test method and there shall be equipment and/or procedure for the safe removal of contaminated filters.
- (C) Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage. Each filter bed serving sensitive areas or central air systems shall have a manometer installed across each filter bed.
- (D) Ventilation systems serving recovery rooms shall not be tied in with soiled holding or work rooms, janitors' closets or waiting rooms if the air is to be recirculated in any manner except through approved filters.
- (7) Air handling duct systems shall not have ~~dust~~ duct linings.
- (8) The following general air pressure relationships and ventilation shall apply:

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Total Air Changes per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating Room	P	25 6	Optional	Only with approved filters.
Recovery Room	EP	6	Optional	See Sub-paragraph (b) (6)(D) of this Rule.
Soiled Workroom or Soiled Holding Clean Workroom	N	10	Yes	No
Clean Holding Examination Room	P +/-	4 6	Optional	Optional
Treatment Room	+/-	6	Optional	Optional
Medication room	P	4	Optional	Optional
X-Ray (Diagnostic And Treatment)	+/-	6	Optional	Optional
Laboratory (general)	N	6	Optional	Optional

P = Positive N = Negative E = Equal +/- = continuous Directional control not required

(9) Operating rooms or procedure rooms which are used with either life sustaining electrical equipment or identified as a critical care location shall comply with the requirements

for ventilation in NFPA 99, Chapter 5, Environmental Systems.
 (10) Prior to occupancy of the facility, the facility shall obtain documentation verifying that all mechanical systems have been tested, balanced, and operated to demonstrate that the

installation and performance of these systems conform to the approved design. Test results shall be maintained in the facility maintenance files.

(11) Upon completion of equipment installation, the facility shall acquire and maintain a complete set of manufacturers' operating, maintenance, and preventive maintenance instructions, parts lists, and procurement information including equipment numbers and descriptions.

(12) Operating staff shall be provided with instructions for properly operating systems and equipment.

(c) ~~Anesthetizing Medical gases~~

~~(1) If flammable anesthesia is used, the facility shall comply with the current requirements of NFPA 56A, code for the use of inhalation anesthetics.~~

~~(2) If flammable anesthetics are not to be used, the facility shall comply with the current requirements of NFPA 56A, code for the use of inhalation anesthetics, except that ground fault protection shall be provided in lieu of an isolated electrical system.~~

The performance, maintenance, installation, and testing of medical gas systems shall comply with the requirements of National Fire Protection Association Standard 99. When any piping or supply of medical gases is installed, altered, or augmented, the altered zone shall be tested and certified as required by National Fire Protection Association Standard 99. Testing shall be conducted by the facility and at least one other independent testing organization to ensure that the system is safe for patient use.

Authority G.S. 131E-149.

10 NCAC 03Q .1406 PLUMBING AND OTHER PIPING SYSTEMS

All building plumbing systems shall be installed in accordance with the requirements of the ~~National Standard Plumbing Code~~ North Carolina State Building Code, Volume II.

(1) Plumbing Fixtures:

(a) The material used for plumbing fixtures shall be of non-absorptive acid-resistant material.

(b) Lavatories and sinks required shall have the water supply spout mounted so that its discharge point is a minimum distance of 5" (12.7 cm.) above the rim of the fixture. All fixtures used by medical and nursing staff shall be trimmed with valves which can be operated without the use of hands. Where blade handles

are used for this purpose, they shall not exceed 4 1/2" (11.43 cm.) in length, except that handles on scrub sinks and clinical sinks shall be not less than 6" (15.24 cm.) long.

(c) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(2) Water Supply Systems:

(a) Systems shall be designed to supply water to the fixtures and equipment at a sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Backflow preventers shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached.

(d) Hot water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at the handwashing and bathing facilities shall not exceed ~~110/116° F~~ (43°C) (46.6°C).

(3) Drainage Systems:

(a) Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

(b) Piping systems shall be designed to avoid, insofar as is possible, installations in the ceiling directly over operating rooms.

(c) Floor drains shall not be installed in operating rooms.

(d) Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment which conforms to applicable local and state regulations is required.

(4) Non-flammable medical gas system installations shall be in accordance with the requirements of ~~NFPA National Fire Protection Association (NFPA) 56A, NFPA 56F~~ Standard 99 and NFPA 50. Clinical vacuum (suction) system installations shall be in accordance with the requirements of NFPA Standard 99. The minimum number of outlets is shown below.

Minimum Medical Gas Station Outlets and Vacuum Station Inlets

<u>Location</u>	<u>Oxygen</u>	<u>Vacuum</u>	<u>Medical Air</u>
<u>Operating Room</u>	<u>2/room</u>	<u>3/room</u>	<u>1/room</u>
<u>Recovery Room</u>	<u>1/bed</u>	<u>3/bed</u>	<u>1/bed</u>

~~(5) Clinical vacuum (suction) system installations shall be in accordance with the requirements of Compressed Gas Association Pamphlet P-2.1.~~

~~(6)(5) Service outlets for built-in housekeeping vacuum systems, if used, shall not be located within operating rooms.~~

Authority G.S. 131E-149.

10 NCAC 03Q .1407 ELECTRICAL REQUIREMENTS

(a) General:

(1) All material including equipment, conductors, controls and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards, where such standards have been established.

~~(2) All material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of North Carolina State Building Code, Volume IV, Electrical. A written record of performance tests on electrical systems and equipment shall show compliance with applicable codes and standards.~~

~~(2)(3) Lighting and appliance panelboards shall be located on the same floor as the circuits they serve.~~

(b) Lighting:

(1) All spaces occupied by people and equipment shall have electric lighting.

(2) Operating rooms shall have general lighting for the room in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

(c) ~~Emergency~~ Power:

~~(1) If flammable anesthetics are to be used, the facility shall meet the requirements of NFPA 70, National Electric Code, including requirements for emergency generators for medical facilities.~~

~~(2)(1) If non-flammable anesthetics are not to be used, the facility shall meet the requirements of NFPA 70, National Electric Code, except that ground fault protection may be omitted NFPA 99, Health Care Facilities Code. Lighting and essential equipment shall have battery back-up.~~

~~(3) Emergency electric service when required must supply the following automatically~~

~~transferred loads from an automatically started generator set:~~

~~(A) lighting:~~

~~(i) exitways and all necessary ways of approach thereto including exit doorways, and corridors;~~

~~(ii) exit signs and exit directional signs shall be illuminated;~~

~~(iii) surgical, operating lights and recovery room lights; and~~

~~(iv) generator set location: general illumination and selected receptacles~~

~~(B) equipment:equipment:~~

~~(i) alarms systems;~~

~~(ii) pump for central suction system;~~

~~(ii) exit signs and exit directional signs shall be illuminated;~~

~~(iii) surgical, operating lights and recovery room lights; and~~

~~(iv) ventilation fans.~~

(2) Procedures that create a direct electrical pathway to the heart or create conditions meeting the definition of a wet location shall be provided with an isolated power system (IPS) in the patient care area.

(3) Procedures that require electrically powered devices that because of patient safety can not tolerate an outage due to equipment faults shall be provided with an isolated power system (IPS) in the patient care area.

(4) Procedures that can be safely carried out with conventional grounded power systems shall be provided with ground fault interrupters on each circuit installed in the operating or procedure room serving the patient care area.

(5) Critical care areas require a Type 1 essential electrical system.

(6) Procedures requiring the use of electrical life support equipment require a Type 1 essential electrical system.

(7) All facilities shall have as a minimum a Type 3 essential electrical system.

(8) All devices, switches, receptacles, etc., connected to the essential electrical system shall be distinctively identified so that personnel can easily select which device is expected to operate during failure of normal source of power.

(9) Fuel for the essential electrical system generator shall be stored on site in sufficient quantity to provide for not less than 24 hours of operation.

(d) Receptacles:

(1) Each operating or procedure room shall have at least eight 120 volt duplex receptacles.

- ~~(1)~~(2) In locations where mobile X-ray is used, an additional receptacle, distinctively marked for X-ray use, shall be provided.
- ~~(2)~~(3) Fixed and mobile X-ray equipment installations shall conform to Article 660 ~~NEPA Standard No. 70~~, of the North Carolina State Building Code, Volume IV, Electrical

- and maintained with consideration for the safety and comfort of patients, staff and visitors; and
- (4) There shall be a definite assignment of maintenance functions to qualified personnel under supervision.

Authority G.S. 131E-149.

Authority G.S. 131E-149.

10 NCAC 03Q .1408 GENERAL

The design, construction, maintenance and operation of a facility shall be in accordance with those codes and standards listed in Rule .1409, LIST OF REFERENCED CODES AND STANDARDS, and codes, ordinances, and regulations enforced by city, county, or other state jurisdictions with the following requirements:

- (1) Notify the Division when all construction or renovation has been completed, inspected and approved by the architect and engineer having responsibility, and the facility is ready for a final inspection. Prior to using the completed project, the facility shall receive from the Division, written approval for use. The approval shall be based on an on-site inspection by the Division or by documentation as may be required by the Division;
- (2) In the absence of any requirements by other authorities having jurisdiction, develop a master fire and disaster plan with input from the local fire department and local emergency management agency to fit the needs of the facility. The plan shall require:
 - (a) Training of facility employees in the fire plan implementation, in the use of fire-fighting equipment, and in evacuation of patients and staff from areas in danger during an emergency condition;
 - (b) Conducting of quarterly fire drills on each shift;
 - (c) A written record of each drill shall be on file at the facility for at least three years;
 - (d) The testing and evaluation of the emergency electrical system(s) once each year by simulating a utility power outage by opening of the main facility electrical breaker(s). Documentation of the testing and results shall be completed at the time of the test and retained by the facility for three years; and
 - (e) Disaster planning to fit the specific needs of the facility's geographic location and disaster history, with at least one documented disaster drill conducted each year;
- (3) The facility structure, component parts, and building systems shall be kept in good repair

10 NCAC 03Q .1409 LIST OF REFERENCED CODES AND STANDARDS

The following codes and standards are adopted by reference including subsequent amendments. Copies of these publications can be obtained from the various organizations at the addresses listed:

- (1) The North Carolina State Building Code, current edition, all volumes including subsequent amendments. Copies of this code may be purchased from the N.C. Department of Insurance Engineering Division located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost of two hundred fifty dollars (\$250.00).
- (2) The National Fire Protection Association codes and standards listed below, current editions including subsequent amendments. Copies of these codes and standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-9101 at the cost shown for each code or standard listed:
 - (a) 10 Portable Fire Extinguishers twenty-seven dollars (\$27.00)
 - (b) 13 Installation of Sprinkler Systems thirty-eight dollars and seventy-five cents (\$38.75)
 - (c) 20 Installation of Centrifugal Fire Pumps twenty-seven dollars (\$27.00)
 - (d) 22 Water Tanks for Private Fire Protection twenty-seven dollars (\$27.00)
 - (e) 25 Water-Based Fire Protection Systems thirty-two dollars (\$32.00)
 - (f) 30 Flammable and Combustible Liquids Code twenty-seven dollars (\$27.00)
 - (g) 31 Installation of Oil-Burning Equipment twenty-four dollars and twenty-four cents (\$24.25)
 - (h) 37 Stationary Combustion Engines and Gas Turbines twenty-four dollars and twenty-four cents (\$24.25)
 - (i) 50 Bulk Oxygen Systems at Consumer Sites twenty dollars and twenty-five cents (\$20.25)
 - (j) 53 Fire Hazards in Oxygen-Enriched Atmospheres twenty-seven dollars (\$27.00)

PROPOSED RULES

- (k) 54 National Fuel Gas Code thirty-two dollars (\$32.00)
- (l) 55 Compressed and Liquefied Gases in Portable Cylinders twenty dollars and twenty-five cents (\$20.25)
- (m) 58 Storage and Handling of Liquefied Petroleum Gases thirty-two dollars (\$32.00)
- (n) 59A Liquefied Natural Gas (LNG) twenty-four dollars and twenty-five cents (\$24.25)
- (o) 72 National Fire Alarm Code thirty-eight dollars and seventy-five cents (\$38.75)
- (p) 80 Fire Doors and Windows twenty-seven dollars (\$27.00)
- (q) 82 Incinerators, Waste and Linen Handling Systems and Equipment sixteen dollars and seventy-five cents (\$16.75)
- (r) 90A Installation of Air Conditioning and Ventilating Systems twenty-four dollars and twenty-five cents (\$24.25)
- (s) 90B Installation of Warm Air Heating and Air Conditioning Systems twenty dollars and twenty-five cents (\$20.25)
- (t) 92A Smoke-Control Systems twenty-four dollars and twenty-five cents (\$24.25)
- (u) 92B Smoke Management Systems in Malls, Atria, Large Areas twenty-four dollars and twenty-five cents (\$24.25)
- (v) 99 Health Care Facilities thirty-eight dollars and seventy-five cents (\$38.75)
- (w) 101 Safety to Life from Fire in Buildings and Structures forty-eight dollars and fifty cents (\$48.50)
- (x) 101A Alternative Approaches to Life Safety twenty-seven dollars (\$27.00)
- (y) 105 Smoke-Control Door Assemblies twenty dollars and twenty-five cents (\$20.25)
- (z) 110 Emergency and Standby Power Systems twenty-four dollars and twenty-five cents (\$24.25)
- (aa) 221 Fire Walls and Fire Barrier Walls twenty dollars and twenty-five cents (\$20.25)
- (bb) 241 Construction, Alteration, and Demolition Operations twenty-four dollars and twenty-five cents (\$24.25)
- (cc) 780 Lightning Protection Code twenty-four dollars and twenty-five cents (\$24.25)

- (dd) 801 Facilities Handling Radioactive Materials twenty dollars and twenty-five cents (\$20.25)
- (3) American Society of Heating, Refrigerating & Air Conditioning Engineers, (ASHRAE) HVAC APPLICATIONS, current edition including subsequent amendments. Copies of this document may be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers at United Engineer Center, 345 East 47th Street, New York, NY 10017 at a cost of one hundred nineteen dollars (\$119.00).

Authority G.S. 131E-149.

10 NCAC 03Q .1410 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

The physical plant requirements for each facility shall be applied as follows:

- (1) All newly licensed facilities shall comply with the requirements of Section .1400;
- (2) Existing licensed facilities shall meet licensure and code requirements in effect at the time of construction, alteration, or modification;
- (3) New additions, alterations, modifications, and repairs of existing licensed facilities shall meet the technical requirements of Section .1400, however, where strict conformance with current requirements would be impractical, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Section .1400 are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, may be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.

Authority G.S. 131E-149.

10 NCAC 03Q .1411 ACCESS AND SAFETY

Projects involving replacement of, alterations of, and additions to existing licensed facilities shall be planned and phased so that construction will minimize disruptions of essential facility operations. Facility access, exit ways, safety provisions, and

PROPOSED RULES

building and life safety systems shall be maintained so that the health and safety of the occupants will not be jeopardized during construction. Additional safety and operating measures shall be planned, documented, and executed to compensate for hazards related to construction or renovation activities to maintain an equivalent degree of health, safety, and operational effectiveness to that required by rules, standards, and codes for a facility not under construction or renovation.

Authority G.S. 131E-149.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services, DHHS intends to amend the rule cited as 10 NCAC 03R .0214. Notice of Rule-making Proceedings was published in the Register on April 15, 2002 and June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 14, 2002

Time: 2:00 p.m.

Location: Division of Facility Services, Council Building, Room 201, 701 Barbour Dr., Dorothea Dix Campus, Raleigh, NC

Reason for Proposed Action: The 2002 SMFP identifies a need for a limited number of dedicated PET scanners. However, the Plan also permits persons to apply for certificates of need (CON) to acquire circuitry that enables ordinary gamma cameras to perform PET scans. This rule change prohibits an applicant from obtaining a certificate of need (CON) to acquire coincidence circuitry and then replacing the upgraded gamma camera with a dedicated PET scanner without a CON. This closes an unintended loop-hole in the 2002 SMFP, and prevents the proliferation of unauthorized and unneeded PET scanners.

Comment Procedures: Questions or comments concerning these Rules should be directed to Mark Benton, Chief of Budget and Planning/Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701. Comments will be received through October 14, 2002.

Fiscal Impact

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

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R - CERTIFICATE OF NEED REGULATIONS

SECTION .0200 – EXEMPTIONS

10 NCAC 03R .0214 REPLACEMENT EQUIPMENT

(a) The purpose of this Rule is to define the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).

(b) "Activities essential to acquiring and making operational the replacement equipment" means those activities which are indispensable and requisite, absent which the replacement equipment could not be acquired or made operational.

(c) "Comparable medical equipment" means equipment which is functionally similar and which is used for the same diagnostic or treatment purposes.

(d) Replacement equipment is comparable to the equipment being replaced if:

- (1) it has the same technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; and
(2) it is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use and is not used to provide a new health service; and
(3) the acquisition of the equipment does not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment is acquired.

(e) Replacement equipment is not comparable to the equipment being replaced if:

- (1) the replacement equipment is new or reconditioned, the existing equipment was purchased second-hand, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or
(2) the replacement equipment is new, the existing equipment was reconditioned when purchased, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or
(3) the replacement equipment is capable of performing procedures that could result in the provision of a new health service or type of procedure that has not been provided with the existing equipment; or
(4) the replacement equipment is purchased and the existing equipment is leased, unless the lease is a capital lease-lease: or
(5) the replacement equipment is a dedicated PET scanner and the existing equipment is:
(A) a gamma camera with coincidence capability; or
(B) nuclear medicine equipment that was designed, built, or modified to detect only the single photon emitted from nuclear events other than positron annihilation.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10I .0102. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 24, 2002

Time: 9:30 a.m.

Location: NC Wildlife Resources Commission, Room 332, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *This Rule is intended to clarify the current rule on permits for taking or possession of an endangered, threatened or special concern species by an entity other than the Wildlife Resources Commission.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until October 3, 2002. Such written comments must be mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15 NCAC 10I .0102 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN SPECIES

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0103, threatened in Rule .0104 or, unless otherwise provided, as special concern in Rule .0105 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

~~(b) Permits. The executive director may issue permits to take an endangered, threatened, or special concern species for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a commission approved study or restoration effort.~~

(b) Permits. The executive director may issue permits to take or possess an endangered, threatened, or special concern species as follows:

- (1) To an individual or institution with experience and training in handling, and caring for the

wildlife and in conducting a scientific study, for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a scientifically valid study or restoration effort; or

(2) To a public or private educator or exhibitor who demonstrates that he or she has lawfully obtained the specimen or specimens in his or her possession, and that he or she possesses the requisite equipment and expertise to care for such specimen or specimens; or

(3) To a person who lawfully possessed any such species for more than 90 days immediately prior to the date that such species was listed, provided however, that no permit shall be issued more than 90 days after the effective date of the initial listing for that species.

(c) Taking Without a Permit:

(1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit.

(2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species without a permit if the action is necessary to:

- (A) aid a sick, injured, diseased or orphaned specimen;
- (B) dispose of a dead specimen;
- (C) salvage a dead specimen which may be useful for scientific study; or
- (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; the taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a suitable habitat.

(d) Reporting: Any taking or possession of an endangered, threatened, or special concern species under Paragraphs (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exception:

(1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are distinctly labeled to

indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.

- (2) Raptors listed as special concern species in Rule .0105 of this Subchapter may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.
- (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.
- (4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0105 of this Subchapter shall be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that the specimens were lawfully obtained from captive or wild populations outside of North Carolina; and that they must be possessed in indoor facilities; and that all transportation of specimens provides adequate safeguards against accidental escape; and that importation, possession and sale or transfer is permitted only as listed in Sub-items (e)(4)(A) and (B) of this Rule.

(A) A written application to the Commission is required for a permit to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.

(B) Purchase, importation, and possession of special concern species within North Carolina shall be allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to out of state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides adequate safeguards against accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no

specimens may be stocked or released in the public or private waters or lands of North Carolina and may not be transferred to any private individual.

Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 21F .1204. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 1, 2002

Time: 1:00 p.m.

Location: Room G1-A, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action: Compliance with legislative mandate [S.L. 2000, c. 67, s. 11.31(a)5] to implement NC Universal Newborn Hearing Screening Program. These permanent rule changes will help to assure standardized reporting by hospitals once required screening services are provided.

Comment Procedures: Comments from the public shall be directed to Chris G. Hoke, 2001 Mail Service Center, Raleigh, NC 27699-2001, phone (919) 715-4168, or email Chris.Hoke@ncmail.net. Comment period ends October 3, 2002.

Fiscal Impact

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

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .1200 - NEWBORN SCREENING PROGRAM

15A NCAC 21F .1204 REPORTING REQUIREMENTS

(a) The attending physician shall order ~~and that~~ all persons performing physiologic hearing screenings for infants less than six months of age shall ~~identify and report to the local health department of residence all infants who were not successfully screened or who failed to pass the physiologic hearing screening. When the infant's residence is out of state, the report shall be made to CSHS. These reports shall be submitted within 30 days after medical facility discharge, and within 30 days after the date of the screening following discharge and the date of any missed scheduled appointment for such screening report within five days following the screening (or date of the appointment for the~~

screening) to the North Carolina State Laboratory for Public Health:

- (1) Identifying information for each infant; and
- (2) The outcome of each hearing screening; or
- (3) Date of missed scheduled appointment for such screening.

Birthing/neonatal facilities shall submit initial hearing screening outcomes simultaneously with each infant's blood specimen for genetic screening.

(b) All ~~persons~~ birthing/neonatal facilities performing neonatal physiologic hearing screenings shall report quarterly to ~~CSHS~~ the Division of Public Health, within 30 days after the end of each quarter in the calendar year, ~~the following:~~ total unduplicated count of:

- (1) Total number of neonates ~~Neonates~~ who were screened; screened by each tester and the number who passed that screening, with the results of multiple screenings for the same neonate being clarified.
- (2) Total number of neonates ~~Neonates~~ whose parents or guardians objected to the hearing screening. ~~screening;~~
- (3) Total number of live ~~Live~~ births, if the report is being submitted by a medical facility. ~~facility;~~
- (4) Transfers into the facility, not previously screened; and
- (5) Neonates not screened due to transfer out of the facility, NICU complications, missed screening, death or other reasons.

(c) All persons performing diagnostic auditory ~~tests which supercede or follow physiologic hearing screenings for infants less than six months of age shall identify the child and report the outcome of the diagnostic testing procedure to the local health department of residence, within 30 days following the infant's initial testing date and the date of any missed scheduled appointment for such testing. When the infant's residence is out of state, the report shall be made to CSHS~~ evaluations and assessments for selection of amplification for infants less than twelve months of age shall report within five days of the appointment to the North Carolina State Laboratory for Public Health:

- (1) Identifying information for each child; and
- (2) Outcome of the diagnostic evaluation; and/or
- (3) Amplification selection; or
- (4) Date of missed appointment for such evaluations or assessments.

Authority G.S. 130A-125.

TITLE 18 – DEPARTMENT OF THE SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 06 .1213, .1319-.1320 and amend the rules cited as 18 NCAC 06 .1104, .1205-.1206, .1208, .1308, .1501. Notice of Rule-making Proceedings was published in the Register on April 15, 2002 and June 17, 2002.

Proposed Effective Date: *April 1, 2003*

Public Hearing:

Date: *September 18, 2002*

Time: *10:00 a.m.*

Location: *Legislative Office Building, 300 N. Salisbury St., Suite 100, Raleigh, NC*

Reason for Proposed Action: *The 2001 General Assembly, in S.L. 2001-436, passed an act making revisions to North Carolina's insurance and securities laws regulating viatical settlement contracts. S.L. 2001-436 directs the Securities Administrator to adopt conditions governing the offer and sales of any viatical settlement contract or any fractionalized or pooled interest therein.*

Comment Procedures: *Comments will be accepted through October 3, 2002 at North Carolina Department of the Secretary of State, Securities Division, Attn. David S. Massey, 300 N. Salisbury St., Suite 100, Raleigh, NC 27699-5909.*

Fiscal Impact

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

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.

Authority G.S. 78A-49(a).

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.

(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 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 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;~~ 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.

~~(5)~~(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).

Authority G.S. 78A-17(9); 78A-49(a); S.L. 2001, c. 436, s. 7, 10, 11.

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:

~~(1)~~(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

~~(2)~~(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 ~~in addition to all other requirements of this Rule .1206.~~ In all sales pursuant to the exemption provided by this Rule 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.

Authority G.S. 78A-17(17); 78A-49(a); S.L. 2001, c.436, s.10, 11.

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 five 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 U2A), 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.

Authority G. S. 78A-17(17); 78A-49(a); S.L. 2001, c. 436, s. 10.

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 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, together with a nonrefundable filing fee of five hundred dollars (\$500.00), payable to the Secretary of State, shall be filed with the Administrator not later than ten 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 this Rule 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.

SECTION .1300 - REGISTRATION OF SECURITIES

(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 this Rule 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.

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.

(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;

Authority S.L. 2001, c. 436, s. 7, 8, 10, 11.

- (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 "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. ~~Provided however, this Rule does not apply to securities offered or sold pursuant to G.S. 78A-17(9) or exemptions promulgated by Rule under G.S. 78A-17(17).~~

Authority G.S. 78A-8(2); 78A-49(a).

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 this Rule shall not be deemed to relieve any person of the duty to comply with the antifraud provisions of the North Carolina Securities Act.

Authority S.L. 2001, c. 436, s. 7; G.S. 78A-8, 78A-9, 78A-10, 78A-11, 78A-12.

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.

Authority S.L. 2001, c. 436, s. 10.

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

PROPOSED RULES

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(1) 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.

Authority G.S. 78A-56(g)(3); S.L. 2001, c. 436, s. 11.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Motor Vehicles intends to amend the rule cited as 19A NCAC 03G

.0205. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Temporary amendments to this Rule were filed effective June 1, 2001 which added a physical exam requirement for certification as a school bus driver. The permanent rule was to be effective August 1, 2002. However, the current budget constraints on state agencies will not allow the Department of Public Instruction to fund the physical exams. The Division of Motor Vehicles is deleting the school bus driver physical exam requirement due to DPI budgetary constraints.

Comment Procedures: Any interested persons may submit comments in writing by sending the comments to Emily Lee, APA Coordinator, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by October 2, 2002.

Fiscal Impact

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

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03G - SCHOOL BUS AND TRAFFIC SAFETY SECTION

SECTION .0200 - SCHOOL BUS DRIVER TRAINING

19A NCAC 03G .0205 ISSUING OF ORIGINAL CERTIFICATE

Any applicant for certification as a school bus driver shall meet the following minimum requirements:

- (1) Legal:
 - (a) Shall be at least 18 years of age with at least six months driving experience as an operator of a motor vehicle, and shall possess a valid North Carolina driver license of Class A, B, or C. In the event a prospective driver shall have his place of residence in another state, he may be certified as a school bus driver if he submits a copy of his driving record from the state in which he is licensed before his initial certification. Also, he must notify both his employer and the N.C. School Bus and Traffic Safety Section within 30 days of a conviction of any moving violation no matter what type of vehicle he was driving.

PROPOSED RULES

- (b) Shall within a period of one year (12 months) immediately preceding certification have on his driving record:
 - (i) No more than one conviction of any moving violation;
 - (ii) No conviction whatever of:
 - (A) Reckless driving;
 - (B) Speeding in excess of 15 mph above the posted limit; or
 - (C) Passing a stopped school bus;
 - (iii) No conviction of a moving violation which was the proximate cause of an accident.
 - (c) Shall within a period of two years (24 months) immediately preceding certification have on his driving record no suspension or revocation of the driving privilege other than for such status offenses as:
 - (i) Lapsed liability insurance;
 - (ii) Failure to appear in court;
 - (iii) Failure to comply with out-of-state citation; or
 - (iv) A 30 day revocation not accompanied by a subsequent conviction of driving while impaired.
 - (d) Shall within a period of five years (60 months) immediately preceding certification have on his driving record:
 - (i) No more than three convictions of moving violations of any kind;
 - (ii) No more than two convictions of moving violations which were the proximate causes of accidents;
 - (iii) No conviction of driving while impaired;
 - (iv) No suspension or revocation of the driving privilege other than for:
 - (A) Those status offenses enumerated in Paragraph (c) of this Rule,
 - (B) Those offenses enumerated in G.S. 20-16(a), subsections (9) and (10).
 - (e) Shall have on his driving record no more than one conviction of driving while impaired.
 - (f) Shall have no "STOP" entry appearing on his driving record at the time of certification.
 - (g) Shall have no record of any conviction of a violation of the criminal code greater than a misdemeanor for a period of at least five years immediately preceding certification. Further, shall never have had in any jurisdiction a conviction of an offense against the public morals, including but not limited to rape and child molestation.
 - (h) Shall have a driving record which in its overall character arouses no serious question about the reliability, judgment, or emotional stability of the applicant.
 - (i) Shall successfully complete the training course for school bus drivers.
- (2) Physical Standards for School Bus Drivers. Every school bus driver ~~shall meet shall:~~
- ~~(a) Meet~~ the physical standards set forth in The North Carolina Physician's Guide To Driver Medical Evaluation, published in June 1995 by the Division of Epidemiology, North Carolina Department of Health and Human Services, which is available without charge from the School Bus & Traffic Safety Section of the Division of Motor Vehicles including any subsequent amendments and editions.
 - ~~(b) On and after July 1, 2003 at the time of his original certification as a school bus driver submit a medical report on a form provided by the Division and signed by a physician, physician assistant, or nurse practitioner licensed to practice and submit such a medical form every two years thereafter.~~
 - ~~(c) On or before June 30, 2004 if he is certified before June 30, 2003 submit a medical report on a form provided by the division and signed by a physician, physician assistant, or nurse practitioner licensed to practice and submit such a medical report form every two years thereafter.~~
 - ~~(d) Be required at any time to submit a medical report on a form provided by the Division and signed by a physician licensed to practice in North Carolina if the Division has good and sufficient cause to believe the driver may not meet the physical standards noted in Subitem (2)(a) of this Rule.~~

Authority G.S. 20-39(b); 20-218.

improve the health and wellness of the residents of North Carolina.

Authority G.S. 147-86.30; 147-86.33.

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Health and Wellness Trust Fund intends to adopt the rules cited as 20 NCAC 10 .0101-.0102, .0201-.0210, .0301-.0302. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 1, 2002

Time: 6:30 p.m.

Location: Forsyth County Health Department, 799 N. Highland Avenue, Room MR2, Winston-Salem, NC

Date: October 29, 2002

Time: 6:30 p.m.

Location: Edwin Monroe Conference Center, 2000 Venture Tower Drive, Greenville, NC

Reason for Proposed Action: *In 2000, the General Assembly enacted legislation to create the Health and Wellness Trust Fund Commission to receive and distribute part of the settlement money coming to North Carolina from the Master Settlement Agreement between 46 states and cigarette manufacturers. The proposed rules are necessary to implement policies, standards and procedures for grant programs authorized by the legislation.*

Comment Procedures: *Written comments may be submitted no later than November 4, 2002, to Jim Davis, Executive Director, Health and Wellness Trust Fund commission, PO Box 24976, Raleigh, NC 27611.*

Fiscal Impact

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

CHAPTER 20 – HEALTH AND WELLNESS TRUST FUND COMMISSION

SECTION .0100 - GENERAL PROVISIONS

20 NCAC 10 .0101 AUTHORIZATION

(a) The Health and Wellness Trust Fund Commission is authorized by G.S. 147, Article 6C to develop a comprehensive plan to finance programs intended to improve the health and wellness of the people of North Carolina. Funds provided pursuant to this authority are to be used to supplement, not supplant, existing funding of health and wellness programs.

(b) As part of its authority to develop guidelines and criteria for awarding grants, the Commission may periodically set a list of funding priorities which it will follow in awarding grants. The Commission may also request proposals to address these specific funding priorities or to encourage specific programs intended to

20 NCAC 10 .0102 DEFINITIONS

The following definitions are in effect throughout this Chapter:

- (1) Advisory Committee. One or more committees appointed by the Commission consisting of experts to advise the Commission on drafting Requests for Proposals or reviewing grant applications.
- (2) Capacity building. Any resources that strengthen or enhance a community's ability to meet the health and wellness needs of its residents. More specifically, capacity building is a term referring to the collective traits that enable an organization to perform at an optimum level. Capacity building leads to organizational effectiveness and may include assistance to hire staffing to acquire technology, to train staff and/or Boards, and to learn new skills.
- (3) Commission. The Health and Wellness Trust Fund Commission appointed pursuant to G.S. 147-86.32 and/or the Commission staff.
- (4) Corporation. A legal entity created under the laws of North Carolina or another State which is vested with the authority to transact business.
- (5) Fund. The Health and Wellness Trust Fund established by G.S. 147-86.30(a).
- (6) Fund Reserve. Fifty percent (50%) of each annual payment from the tobacco Master Settlement Agreement from 2001 through 2025 as defined in G.S. 147-86.30 (c).
- (7) Master Settlement Agreement. The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.
- (8) Person. An individual human being.
- (9) Requests for proposals. Specific written requests for grant proposals solicited by the Commission to fund specific priorities or programs.
- (10) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption.

Authority G.S. 147-86.30; 147-86.33.

SECTION .0200 - GRANT PROGRAM

20 NCAC 10 .0201 PURPOSE

The purpose of the Commission's Grant Program is to provide funding for projects:

- (1) which address the health needs of vulnerable and underserved populations in North Carolina;
- (2) which address research, education, prevention and treatment of health programs in North Carolina;
- (3) which increase the capacity of communities to respond to public health needs in North Carolina; or
- (4) which develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with an emphasis on reducing youth tobacco use. In developing comprehensive, community-based plans, the Commission will consider all facets of health, including prevention, education, treatment, research and related areas.

Authority G.S. 147-86.30.

20 NCAC 10 .0202 TYPES OF GRANTS

The Commission shall have two types of grant programs.

- (1) General Grants. General grants are grants awarded to applicants seeking funding for programs to address a health need or wellness issue existing in North Carolina which the application highlights as needing attention. General grants may also address an area of health and wellness which the Commission has identified as a funding priority. General grants shall follow an annual funding cycle beginning January 1st of any year through December 31st of that same year. Applications for any funding year are due on or before August 1st.
- (2) Requests for Proposals (RFP) Grants. Requests for proposals grants are grants awarded in response to requests for proposals published by the Commission to address its funding priorities or to provide specific health and wellness programs identified by the Commission.

Authority G.S. 147-86.30; 147-86.33.

20 NCAC 10 .0203 ELIGIBILITY TO RECEIVE GRANTS

Only the following organizations are eligible to receive Commission grants of any kind:

- (1) State agencies; or
- (2) A local government or other political subdivision of the State or a combination of such entities; or
- (3) A nonprofit corporation which has as a significant purpose promoting the public's health, or limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

Authority G.S. 147-86.31.

20 NCAC 10 .0204 APPLICATIONS FOR GENERAL GRANTS

(a) General grant proposals shall be typed or printed in ink in 12 point type on 8 ½" by 11" white or light colored paper and five one-sided copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. Completed general grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

(b) To be eligible for consideration for funding, applicants shall complete the Health and Wellness Trust Fund General Grant Application Form which shall contain at a minimum the following information:

- (1) Name, mailing address, telephone number, facsimile number, email and federal identification number for the applying organization and name of the key contact person at the applying organization;
- (2) A description of the applying organization including history, current programs, activities, accomplishments, a mission statement, financial information, audit statements (if available), organizational goals, a list of members of the Board of Directors, a list of major contributors to the organization with the amounts given for the current year, and if a nonprofit organization, evidence of tax-exempt status. If the application involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the general grant; but there must be a lead organization identified which shall have fiscal responsibility for the grant and for the activities proposed;
- (3) A verified statement from the chair of the Board of Directors or the head of the applying entity from the applying entity stating that the grant application has the approval of the governing body.
- (4) A description of the proposed project, including the project's goals and measurable objectives, the manner in which the applicant intends to accomplish these goals and objectives, and a statement of how these goals and objectives meet the Commission's current funding priorities. The description of the need for the project or program should be brief.
- (5) A detailed statement of the projected annual budget of the proposed project, including any administrative costs as well as the budget of the applying organization or in case there is more than one organization, of the lead organization which reflects expected funding from any other sources which have been applied for or have been received. The projected annual budget must also include an allocation for conducting an outcomes analysis and/or evaluation of the project.

- (6) A complete list of sub-recipients under the grant and a specification of how the applicant's methodology for accounting for funds disbursed to sub-recipients will work. The applicant shall have a continuing duty to identify sub-recipients under the grant.
- (7) A description of how the project will be completed including time lines;
- (8) A description of the geographic area and population the project will serve and an explanation of how these people will benefit from the project;
- (9) A description of the bank accounts and internal accounting ledgers or books that will be set up and used and an assurance that all accounts, books and ledgers can be audited by the Commission or the State auditor;
- (10) A list of expected outcomes from the project including what the applicant expects the project to accomplish and an explanation of how the project's results will be evaluated along with a definition of the long-term impact of the project;
- (11) At least three references whom the Commission may contact;
- (12) Any other information required by G.S. 147, Article 6C or required by the Commission in order to make a decision on the grant proposal;
- (13) An explanation of how the project will be sustained beyond the life of the grant;
- (14) An explanation of how the program will build or enhance health care capacity in the community served.
- (15) A list and history of applicant's past projects funded by grants or awards as well as the names of all granting entities involved in those grants or awards.

(c) As a condition of applying for or of receiving a grant, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience and must also allow the State auditor or an outside auditor hired by the Commission to have access to all books and records of the grant project.

Authority G.S. 147-86.33.

20 NCAC 10 .0205 APPLICATION FOR GRANTS ISSUED IN RESPONSE TO REQUESTS FOR PROPOSALS

The Commission may specify programs based on its funding priorities which address specific health needs of the residents of North Carolina or programs intended to improve the health and wellness of the residents of North Carolina and grant money to eligible entities that can best perform the specified work. Specifications shall include the information required for general grants listed in 20 NCAC 10.0204 to the maximum extent possible and may be published in formal documents available on the Commission website. To be complete, responses to requests for proposals must address each and every specification contained in the request for proposals. Incomplete responses to requests for proposals will be returned to the applicant with an

explanation of what is missing. Formal requests for proposals will be kept open for at least 30 days.

Authority G.S. 147-86.30; 147-86.33.

20 NCAC 10 .0206 OUT OF CYCLE AWARD OF GENERAL GRANTS

The Commission may consider and award general grants out of cycle for good cause shown if the following conditions are met:

- (1) The requested program will respond to a serious and unforeseen threat to the public health, safety or welfare; or
- (2) The requested program is required in response to a recent change in federal or State budgetary and/or health care related policy; or
- (3) The requested program is in response to a disaster as that term is defined in of G.S. 166A, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest. The maximum amount which can be awarded to an out of cycle grant is twenty-five thousand dollars (\$25,000.00).

Authority G.S. 147-86.33.

20 NCAC 10 .0207 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission and his or her staff or designee shall screen all grant applications, whether general grant applications or applications in response to requests for proposals, to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.

(b) Applications that have been deemed complete will be forwarded to one or more Grant Review Committees of the Commission. Grant Review Committee members shall include Commissioners. Grant Review Committees may hire consultants or appoint advisory committees to advise them in their review and evaluation of the grant proposals.

(c) During the review and evaluation of proposals, the Grant Review Committees may request that the Commission staff or designee make site visits and report to the Grant Review Committee. At the conclusion of their review and evaluation, Grant Review Committees will make recommendations to the Commission.

(d) The Commission will receive the suggestions of the Grant Review Committees and will evaluate proposals based on the beneficial impact of the request on the health and wellness of the people of North Carolina. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant, capacity building and sustainability of the grant application and whether the grant will benefit the health and wellness of the residents of the State in a measurable manner. Scoring and ranking of proposals may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings.

(e) No grant may be awarded for a project that is unlawful.

Authority G.S. 147-86.33.

20 NCAC 10 .0208 AWARD OF GRANTS

(a) All applicants will be notified in writing whether they have received a grant or not. All awards will be made subject to the availability of funds to the Commission.

(b) All grant awards shall be incorporated in a written grant agreement between the Commission and the grantee. The grant proposal, whether for a general grant or a requests for proposals grant, shall be incorporated into the grant agreement and the goals, time lines and other grant objectives shall be performance standards for the grant agreement.

(c) Funds will be transmitted to grantees based on a schedule agreed upon in a grant agreement with the Commission.

(d) The grant agreement may allow up to 50 percent of the total funding for the first program year to be paid upon signing of the contract if such payment is requested in the grant application for start up costs and initial administration.

(e) Of the total funds granted for each project, 25 percent shall be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met. This term shall be incorporated within all grant agreements of the Commission. This requirement may be waived if the grant applicant demonstrates undue hardship as a result of this term at the time of signing of the grant agreement.

(f) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals in the grant agreement.

(g) For good cause shown, the Commission or the Commission staff may agree to amend time lines and/or payment schedules specified in the grant agreement when such changes do not undermine the purposes and goals of grant.

(h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award money to an applicant whose past performance of Commission grants and program has been unsatisfactory.

(i) The granting agreement will also outline the standard accounting practices which the applicant must follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission.

(j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were awarded.

Authority G.S. 147-86.33.

20 NCAC 10 .0209 REPORTING

(a) Successful applicants for both general grants and requests for proposals grants shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the grant project, progress toward achieving grant objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. These reports are due no later than 30 days after completion of the six-month intervals or at other predetermined intervals specified in the

grant agreement. Within 60 days of completion of the grant, the successful applicant must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold grant payments.

Authority G.S. 147-86.33.

20 NCAC 10 .0210 POLICIES GOVERNING GRANTS

(a) Successful applicants must keep financial and other records of the grant for five years and must comply with audit requests. If the Commission in its informed discretion determines that the amount of the money awarded or the performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the grant project.

(b) All applications, attachments to applications and written reports received by the Commission are public records.

Authority G.S. 147-86.33; 147-86.36.

SECTION .0300 – GIFTS AND GRANTS

20 NCAC 10 .0301 GIFTS MADE TO THE COMMISSION

All proposed gifts must be submitted to the Commission for a decision on whether to accept the gift or not. The Commission will direct how all gifts will be used or spent. The Commission may accept gifts and honor the request of the donor or grantor regarding the use of the gift for a specific funding priority, without conditions, if the Commission determines that honoring the request is consistent with the public interest. Under no circumstances can a donor require that the Commission use a gift to award a grant to any specific entity. Upon acceptance, the gift will be deposited in the Commission's general fund at the Treasurer's Office.

Authority G.S. 147-86.33.

20 NCAC 10 .0302 GRANTS ACCEPTED BY THE COMMISSION

The Commission may apply for and may accept grants. Grants may be accepted based upon a mutual agreement with the grantor regarding the use of the grant. All money awarded to the Commission pursuant to a grant will be deposited in the Commission's general fund at the Treasurer's Office.

Authority G.S. 147-86.33.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

**CHAPTER 68 - CERTIFICATION BOARD FOR
SUBSTANCE ABUSE PROFESSIONALS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Substance Abuse Professional Certification Board intends to adopt the rule cited as 21 NCAC 68 .0216. Notice of Rule-making Proceedings was published in the Register on June 3, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 11:00 a.m.

Location: NC Council of Community MH/DD/SA Programs, 1318 Dale St., Suite 120, Raleigh, NC

Reason for Proposed Action: *This Rule is necessary to provide a standard for background investigations of applicants as a part of the process of awarding certifications.*

Comment Procedures: *Comments from the public shall be directed to Jim Scarborough, PO Box 10126, Raleigh, NC 27605 or email eac@ipass.net. Comment period ends October 16, 2002.*

Fiscal Impact

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

SECTION .0200 – CERTIFICATION

**21 NCAC 68 .0216 BACKGROUND
INVESTIGATION**

(a) Every applicant for registration or certification shall provide, at her or his expense, a global criminal history report when:

- (1) An applicant has met all requirements for registration; or
- (2) The applicant has met all requirements for certification; or
- (3) The Board receives information indicating a possible conviction.

If the applicant is unable to submit a report due to his or her inability to obtain the report from the appropriate agency due to the agency's denial of a request for the report, a signed statement listing all of the applicant's criminal convictions (to include all crimes appearing in the categories listed below) shall satisfy this requirement until the applicant can obtain his or her global criminal history report.

(b) If an applicant was registered more than one year earlier, an additional criminal history report is required when applying for certification.

(c) The applicant shall disclose and provide complete information regarding all misdemeanor and felony convictions. Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to registration or certification.

(d) Applications with criminal histories from any jurisdiction shall be categorized according to the seriousness of the offense.

The category shall be determined by the most serious offense, as defined by North Carolina law.

(e) These categories are as follows:

- (1) Category I. The following crimes:
 - (A) Homicide and attempted murder; or
 - (B) Sexual assault, including but not limited to attempted sexual assault, rape, indecent liberties with a child, molestation, and sexual assault of a child.
- (2) Category II. Crimes that primarily result in physical or emotional harm to others, including but not limited to:
 - (A) Manslaughter;
 - (B) Kidnapping or attempted kidnapping;
 - (C) First degree arson;
 - (D) Robbery or attempted robbery;
 - (E) Assault (felony);
 - (F) Larceny from person; and
 - (G) Habitual DWI.
- (3) Category III. Crimes that do not primarily result in physical or emotional harm to others, including but not limited to:
 - (A) Any combination of three or more misdemeanors from Category IV;
 - (B) Assault (misdemeanor);
 - (C) Burglary;
 - (D) Three or more DWIs;
 - (E) Larceny (felony but not from the person);
 - (F) Forgery (felony);
 - (G) Possession of a controlled substance (felony);
 - (H) Delivery of a controlled substance (felony);
 - (I) Financial transaction card theft or fraud;
 - (J) Unauthorized use of a motor vehicle;
 - (K) Unlawfully carrying a weapon (felony or misdemeanor);
 - (L) Burglary of a vehicle;
 - (M) Falsification of government documentation (felony); and
 - (N) Second degree arson.
- (4) Category IV. Misdemeanors which do not result in physical or emotional harm to others. Three or more Category IV convictions (committed as separate incidents) shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:
 - (A) Two DWIs;
 - (B) Possession of a controlled substance;
 - (C) Injury or damage to property;
 - (D) Resisting arrest;
 - (E) Larceny;
 - (F) Prostitution;
 - (G) Criminal mischief;
 - (H) Driving while license suspended or revoked; and

PROPOSED RULES

- (1) Falsification of government documents.
- (5) Category V. Three or more Category V convictions other than a DWI (committed as separate incidents) shall be reclassified as a Category IV offense. Category V offenses include but are not limited to:
 - (A) One DWI;
 - (B) Disorderly conduct;
 - (C) Three or more bad checks; and
 - (D) Intoxicated and disruptive in public.
- (f) The Board shall determine if the conviction is directly related to the duties and responsibilities of a substance abuse professional. The Board shall consider the following factors:
 - (1) The nature and seriousness of the crime;
 - (2) The relationship of the crime to the purposes for requiring a registration or certification as a substance abuse professional;
 - (3) The extent to which a registration or certification might offer an opportunity to engage in further criminal activity of the same type; and
 - (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a substance abuse professional.
- (g) If the Board determines that the conviction does not relate to the duties and responsibilities of a substance abuse professional, the Board shall process the registration or certification application according to standard procedures.
- (h) If the Board determines that the conviction does relate to the duties and responsibilities of a substance abuse professional, the Board shall evaluate the present fitness of the individual to provide substance abuse services.
- (i) The Board shall use the following guidelines in evaluating an individual's present fitness:
 - (1) An applicant with a Category I conviction shall have at least 12 to 15 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category I conviction to be eligible for registration or certification.
 - (2) An applicant with a Category II conviction shall have at least 7 to 12 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for registration or certification.
 - (3) An applicant with a Category III conviction shall have at least three to seven years since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for registration or certification.
 - (4) An applicant with a Category IV conviction shall have at least three years since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for registration or certification.
 - (5) An applicant with a Category V conviction shall have at least one year since the applicant has completed all aspects of his or her sentence received as a result of the last Category V conviction to be eligible for registration or certification.
- (j) The Board shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a substance abuse professional:
 - (1) The age at the time each crime was committed;
 - (2) The conduct and work history of the person before and after the criminal conviction;
 - (3) Evidence of the person's rehabilitation efforts and outcome;
 - (4) The extent and nature of the past criminal history;
 - (5) Two letters of recommendation from qualified credentialed counselors; and.
 - (6) Other evidence of fitness that may be relevant to the Board's assessment, such as a psychological test, mental health status report, substance abuse assessment, etc.
- (k) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.
 - (l) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in G.S. 90, Article 5C G.S. 150B.

Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44.

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 19A – DEPARTMENT OF TRANSPORTATION

Rule-making Agency: *NC Department of Transportation - Division of Motor Vehicles*

Rule Citation: *19A NCAC 03D .0801*

Effective Date: *August 6, 2002*

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

Authority for the rulemaking: *G.S. 20-17.7; 20-2; 20-37.22; 20-96; 20-183.2(a); 20-381*

Reason for Proposed Action: *Due to an inadvertent omission in recent amendments to this Rule, effective August 1, 2002 the Division of Motor Vehicles is without authority to regulate private motor carrier vehicles operating in North Carolina. This omission was brought to the attention of DMV Enforcement officers during a recent federal audit by the federal Motor Carrier Safety Administration. The relevant federal regulation, 49 C.F.R. 350.333, requires that "[t]he State law or regulation must apply to all segments of the motor carrier industry (i.e., for-hire and private motor carriers of property and passengers)." Failure to comply with such regulation makes North Carolina ineligible to receive Federal Motor Carrier Safety Administration funds. See 49 C.F.R. 350.335. North Carolina currently receives approximately \$4.3 million from the Federal Motor Carrier Safety Administration, funding 57 positions in the North Carolina Division of Motor Vehicles which administer and regulate North Carolina's commercial motor vehicle highway safety program. Additionally, the issue is a matter of highway safety. Without the requested temporary rule, DMV is without enforcement authority over a large portion of commercial motor vehicles operating in North Carolina. Currently 46,063 private motor carrier vehicles are registered in North Carolina.*

Comment Procedures: *Any interested person may comment by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501.*

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03D - ENFORCEMENT SECTION

SECTION .0800 - SAFETY RULES AND REGULATIONS

19A NCAC 03D .0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles

engaged in interstate commerce over the highways of the State of North Carolina if such vehicles are commercial motor vehicles as defined in 49 CFR Part 390.5.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for hire motor carrier vehicles, and all private motor carriers and all ~~for-hire~~ private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; or are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-185. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven days of operation.
- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina shall be exempt from the provisions of Part 391.11(b)(1) and may be exempt from provisions of Part 391.41(b)(1) through (11) where applicable and therefore shall be authorized for intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles. These drivers shall continue to be exempt upon completion of a medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer. After a medical review by the Exemption Review Officer, a driver may be granted a waiver not to exceed a period of two years based on the type and severity of the condition. The Exemption Review Officer shall follow the guidelines established for variances from the Federal Motor Carrier Safety Regulations for intrastate commerce found in 49 CFR, Part 350.341.

(c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of

TEMPORARY RULES

the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:

- (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
- (2) It is being used to transport either:
 - (A) agricultural products; or
 - (B) farm machinery, farm supplies, or both, to and from a farm;
- (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
- (4) It is not being used in the operation of a for-hire motor carrier; and
- (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.

(d) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396) which does not display a current approved State inspection certificate as provided in N.C. Gen. Stat. 20-183.2 must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the federal inspection certificate shall be displayed on the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle-inspected; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

(e) The Commissioner may adopt fines for out-of-service criteria. Such fines, as allowed by G.S. 20-17.7, may not exceed the fines adopted by the Commercial Motor Vehicle Safety Alliance that are in effect on the date of the violations. The commercial motor vehicle out-of-service maximum civil fine schedule shall be maintained in the Office of the Commissioner of the Division of Motor Vehicles, be available for public inspection, and be updated annually on the first day of April. The out-of-service maximum civil fine schedule shall not apply to educational contacts or North American Standard Level-V inspections approved by the Director of the DMV Enforcement Section and the Commissioner of Motor Vehicles. An educational contact for the purpose of this code shall mean a pre-planned, public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.

(f) Any fines assessed for violation of an out-of-service criteria shall be assessed against the motor carrier of the commercial motor vehicle.

(g) Whenever a motor carrier of a commercial motor vehicle shall have a valid defense to the enforcement of the collection of fines for violation of out-of-service criteria, such motor carrier

shall pay such fine to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles.

(h) All Code of Federal Regulations (CFR) Parts cited in this Section are incorporated herein by reference including any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost set by that office.

History Note: Authority G.S. 20-17.7; 20-21; 20-37.22; 20-96; 20-183.2(a); 20-381; Eff. December 1, 1983;

Amended Eff. November 1, 1991; October 1, 1991;

Temporary Amendment Eff. February 1, 1992 for a Period of 180 Days to Expire on July 30, 1992;

Temporary Amendment Eff. March 30, 1992 for a Period of 180 Days to Expire on September 26, 1992;

Amended Eff. August 3, 1992; July 1, 1992;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. August 1, 2002; April 1, 2001;

Temporary Amendment Eff. August 6, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 29 – LOCKSMITH LICENSING BOARD

Rule-making Agency: *NC Locksmith Licensing Board*

Rule Citation: *21 NCAC 29 .0101-.0102, .0401-.0403, .0405, .0501-.0505*

Effective Date: *August 13, 2002*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *G.S. 74-F*

Reason for Proposed Action: *The Locksmith Licensing Act requires the Board to license all locksmiths in the State by January 1, 2003. For practical and financial reasons, a swift start on licensing those who qualify for licensure under G.S. 74-F s.2 is a necessary first step.*

Comment Procedures: *Comments from the public shall be directed to Jim Scarborough, PO Box 10972, Raleigh, NC 27605.*

SECTION .0100 – GENERAL

21 NCAC 29 .0101 SCOPE

The rules in this Section set forth the general operating policies and procedures of the North Carolina Locksmith Licensing Board.

History Note: Authority G.S. 74F-5;

Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0102 MEETINGS

(a) Frequency. The Board shall meet at least twice annually and at other times in a location and at a time agreed upon by the membership. The Chair shall call the meetings.

(b) Notice. The Board shall be notified of the time and place of all regular meetings no less than 15 days prior to the meeting unless otherwise agreed upon by the Board.

*History Note: Authority G.S. 74F-5;
Temporary Adoption Eff. August 13, 2002.*

**SECTION .0200-EXAMINATION
(RESERVED)**

**SECTION .0300-DEFINITIONS AND EXPLANATIONS
(RESERVED)**

SECTION .0400 - LICENSING REQUIREMENTS

21 NCAC 29 .0401 APPLICATION FORM

All applications for licensure shall be submitted on the form provided by the Board for this purpose and shall be accompanied by all supporting documents listed as required in the application packet.

*History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002.*

21 NCAC 29 .0402 ESTABLISHMENT OF MORAL AND ETHICAL CHARACTER

(a) The Board may require applicants for licensure and applicants for renewal of licensure to provide, at his or her expense, a criminal history report that satisfies the Board as to its completeness when:

- (1) An applicant has met all other requirements for licensure and the Board deems such a report necessary to verify information provided in the application.
- (2) The Board receives information of a possible conviction.

(b) The applicant shall disclose and provide complete information answering the questions on the application. Failure to make full and accurate disclosure shall be grounds for immediate application denial, revocation, or suspension of licensure or other disciplinary action applicable to licensure.

(c) Applications with criminal histories from any jurisdiction shall be categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by Paragraph (d) of this Rule.

(d) These categories are as follows:

- (1) Category I. The following felonies;
 - (A) Murder or attempted murder; or
 - (B) First or second degree rape; or
 - (C) First or second degree sex offense.
- (2) Category II. Felonies or misdemeanors that primarily result in physical or emotional harm to others, including but not limited to:
 - (A) Manslaughter;
 - (B) Kidnapping or attempted kidnapping;
 - (C) First degree arson;

- (D) Robbery or attempted robbery;
- (E) Felonious assault;
- (F) Larceny from person;
- (G) Habitual DWI or more than three DWIs; and
- (H) Statutory Rape or Sex Offense against a person who is 13, 14, or 15 years old.

(3) Category III. Crimes that do not primarily result in physical or emotional harm to others, including but not limited to:

- (A) Any combination of three or more misdemeanors from Category IV;
- (B) Assault (misdemeanor);
- (C) Burglary;
- (D) Three DWIs;
- (E) Larceny (not from a person but a felony);
- (F) Forgery (felony);
- (G) Possession of a controlled substance (felony);
- (H) Delivery of a controlled substance (felony);
- (I) Financial transaction card theft or fraud;
- (J) Unauthorized use of a motor vehicle;
- (K) Unlawfully carrying a weapon (felony or misdemeanor);
- (L) Burglary of a vehicle;
- (M) Falsification of government documentation (felony); and
- (N) Second degree arson.

(4) Category IV. Misdemeanors which do not result in physical or emotional harm to others. Three or more Category IV convictions (committed in separate incidents) shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:

- (A) Two DWIs;
- (B) Possession of a controlled substance (misdemeanor);
- (C) Reckless damage;
- (D) Resisting arrest;
- (E) Larceny (misdemeanor);
- (F) Prostitution;
- (G) Criminal mischief (misdemeanor);
- (H) Driving while license suspended or revoked;
- (I) Falsification of government documents (misdemeanor);
- (J) Disorderly conduct;
- (K) Three or more bad checks; and
- (L) Intoxicated and disruptive in public.

(e) The Board shall determine if the conviction is directly related to the duties and responsibilities of a locksmith. The Board shall consider the following factors:

- (1) The nature and seriousness of the crime;
- (2) The relationship of the crime to the purposes for requiring a license as a locksmith;

TEMPORARY RULES

- (3) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and
- (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed locksmith.

(f) If the Board determines that the conviction does not relate to the duties and responsibilities of a locksmith, the Board shall process the application according to standard procedures.

(g) If the Board determines that the conviction does relate to the duties and responsibilities of a locksmith, the Board shall evaluate the present fitness of the individual to provide locksmith services.

(h) The Board shall use the following guidelines in evaluating an individual=s present fitness:

- (1) An applicant with a Category I conviction is ineligible for licensure. A licensed locksmith with a Category I conviction will be subject to revocation of license.
- (2) An applicant with a Category II conviction shall have at least 12 to 15 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for licensure. A licensed locksmith convicted of a Category II offense shall be subject to immediate license revocation and reinstatement of license upon the same standards listed in this Rule for applicants.
- (3) An applicant with a Category III conviction shall have at least 7 to 12 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for licensure. A licensed locksmith convicted of a Category III offense may be subject to license revocation and reinstatement of license upon the same standard listed in this Rule for applicants.
- (4) An applicant with a Category IV conviction shall have at least three years since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for licensure. A licensed locksmith convicted of a Category IV offense may be subject to license revocation and reinstatement upon the same standards listed in this Rule for applicants.

(i) The Board shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a locksmith:

- (1) The age at the time each crime was committed;
- (2) The conduct and work history of the person before and after the criminal conviction;
- (3) Evidence of the person's rehabilitation efforts and outcome;
- (4) The extent and nature of the past criminal history;

- (5) Two letters of recommendation from licensed locksmiths; and
- (6) Any other evidence of fitness submitted by the applicant that may be relevant to the Board's assessment, such as a psychological test, mental health status report or substance abuse assessment.

(j) If the person=s criminal activity is related to a history of chemical dependency, the Board shall also consider the person=s efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

(k) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedures established in G.S. 150B, Article 3A and the North Carolina Administrative Code.

History Note: Authority G.S. 74F-6; 74F-7;
Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0403 COMPLETION OF EXAMINATION

An application for licensure will not be considered until the results of the applicant=s Board-administered examination are determined and available to the Board, except when an applicant is exempt from this examination as described in Rule .0405 of this Section.

History Note: Authority G.S. 74F-6; 74F-7;
Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0404 FEES (RESERVED)

21 NCAC 29 .0405 EXEMPTION FROM EXAMINATION

(a) An applicant is exempt from the examination requirement if he or she can demonstrate exemption under S.L. 2001-369, s .2. Documents that can be used to demonstrate exemption under S.L. 2001-369, s .2 include, but are not limited to:

- (1) NC Department of Revenue Merchant Registration Certificates;
- (2) Business Licenses;
- (3) Incorporation documents;
- (4) Certificates of membership in professional associations;
- (5) Receipts for directory advertisements purchased under relevant headings;
- (6) Receipts from wholesalers for supplies and tools of the trade;
- (7) Itemized customer invoices;
- (8) Educational certificates earned; or
- (9) Notarized affidavits from employers, listing the dates of employment and describing the applicant=s relevant duties.

(b) Any applicant who has achieved at least a Certified Registered Locksmith (CRL) designation from the Associated Locksmiths of America (ALOA), upon submitting proof to the Board of such qualification, shall be deemed to have passed the competency portion of the qualifying examination administered by the Board. Such applicants shall be required to pass the

portion of the examination testing understanding of the laws applicable to licensed locksmiths.

History Note: Authority G.S. 74F-6; S.L. 2001 369, s. 2; Temporary Adoption Eff. August 13, 2002.

SECTION .0500-CODE OF ETHICS

21 NCAC 29 .0501 OBLIGATION OF LICENSED LOCKSMITHS

By applying for and accepting a license issued by the Board, all licensees become obligated to comply with the provisions of this Section.

History Note: Authority G.S. 74F-6; Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0502 FAIR BUSINESS PRACTICES

Locksmiths shall conduct all business in a spirit of fairness to the client and in compliance with all applicable laws.

- (1) Locksmiths shall impartially analyze security problems receiving his or her attention and advance the best possible solution for the protection of the client.
- (2) Locksmiths shall perform all locksmith services in a professional manner and provide reasonable warranty against defects in workmanship.
- (3) Locksmiths shall maintain all necessary bonding and insurance for the protection of his or her clients.
- (4) Locksmiths shall refrain from associating themselves with or allowing the use of their name (personal or professional) by any enterprise of questionable character or which in any way countenances misrepresentation.
- (5) Locksmiths shall not misrepresent the features afforded by any product nor make unwarranted claims about the merits of any product or service he or she offers. Prohibited practices include, but are not limited to the following:
 - (a) Representing to a client that non-restricted or widely available keys (whether stamped ADo Not Duplicate@ or not) provide any measure of assurance against unauthorized duplication.
 - (b) Selling a used product as new.
- (6) Locksmiths shall avoid using any improper or questionable means of soliciting business. Prohibited practices include, but are not limited to:
 - (a) Affixing stickers to permanent fixtures such as doors or door frames or in any way defacing the property of any person without their express written consent.
 - (b) Installing stickers or any other promotions in such fashion that they falsely represent that the locksmith or

company has previously serviced the hardware in that location.

- (c) Installing or supplying hardware which curtails the customer=s ability to choose a different company or technician for product support or service, unless the locksmith obtains the customer=s express written consent.
- (d) Modifying the customer=s hardware in any fashion that will curtail the customer=s ability to choose a different company or technician for later product support or service or cause them to incur additional expense by doing so, unless the locksmith obtains the customer=s express written consent.

History Note: Authority G.S. 74F-6; Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTEREST

Locksmiths shall refrain from allowing their specialized skills, knowledge, or access to tools and information to be used in any manner that puts the safety and security of the public at risk.

- (1) In the event that the locksmith suspects wrongful intent or misrepresentation by a potential client, the locksmith shall refuse service and shall immediately notify the law enforcement agency in jurisdiction.
- (2) Locksmiths shall not knowingly infringe a restricted key system.
- (3) Locksmiths shall establish and record the identity of persons requesting lockout services in accordance with Rule .0302 of this Chapter.
- (4) Locksmiths shall not supply an existing key or combination for an architectural lock without verifying the identity and authorization of the client as specified in Rule .0302 of this Chapter. This Rule applies to off-site (shop) service as well as on-site lockout service. Unless the origin of the lock and the authority of the client to obtain the requested key or combination can be established, the locksmith shall insist upon recombining the lock and shall refuse to supply an original key or combination to the lock.
- (5) Locksmiths shall endeavor to install all locking devices in compliance with all relevant codes, such as UBC, NFPA, ADA and any local codes or ordinances that apply. Locksmiths shall in all cases refuse to install a locking device which produces a clear threat to life safety. If such a (pre-existing) condition is encountered, the locksmith shall immediately inform the client and recommend appropriate remedial action.
- (6) Locksmiths shall record the identification of persons receiving copies of keys marked ADo

Not Duplicate@ and those obtaining keys or combinations by code.

(7) Locksmiths shall not become a party to disputes of ownership or authority.

(a) When an authorization dispute is deemed likely to arise, the locksmith shall advise the law enforcement agency having jurisdiction and request the presence of a uniformed officer.

(b) The locksmith will refuse to provide service when there is an unresolved dispute of ownership or authority. Instructions from a uniformed law enforcement officer or a court order shall be accepted as resolution of any such dispute.

(8) Locksmiths will not knowingly interfere with the maintenance of a master key system. When master keyed cylinders are encountered, the key presented without its corresponding master key shall be presumed to be a subordinate key until otherwise determined. An attempt must be made to determine the holder of the master key and seek authorization for cylinder changes or key origination before such service is performed.

(9) Locksmiths shall exercise appropriate caution in the maintenance, storage and dissemination of information and keys.

(a) Key biting arrays, locksmith technical manuals, file keys and all client information shall be maintained in a secure and confidential manner at all times.

(b) Locksmiths shall not release any information or security device, such as a master key or safe combination, to any person without verifying that the recipient is entitled to receive it.

(c) Locksmiths shall not provide knowledge or tools to any individual that would assist them in defeating or bypassing any security device, unless that person is a lawfully practicing locksmith.

Temporary Adoption Eff. August 13, 2002.

21 NCAC 29 .0504 TECHNICAL INTEGRITY

Locksmiths shall always endeavor to service and install security devices in a manner that maintains the highest level of security afforded by the manufacturer of the product.

(1) Locksmiths shall inform clients of the dangers of introducing new keys into a master keyed system without reference to the original biting array. Such introduction of keys shall not be performed without obtaining the signature of the client on a written warning notice.

(2) Locksmiths shall inform clients of the dangers inherent in keying a mechanical lock to operate on several keys in a fashion that requires multiple chambers to be left empty or stacked with more than two master wafers in any chamber (maison keying). Such services shall not be performed without obtaining the signature of the client on a written warning notice.

(3) Locksmiths shall follow industry and manufacturer standards and insure random, complete and qualified recombination of cylinders and combination locks for optimal security maintenance. Practices prohibited include, but are not limited to the following:

(a) The repeated use of a standard key or combination for multiple customers or job sites.

(b) Filing the plug on a mechanical lock cylinder as a means to enlarge the shear line.

(c) Leaving multiple chambers of a mechanical lock empty when not specifically indicated as a feature in a master keyed system.

(4) Locksmiths shall honor manufacturer recommendations for the proper installation of locking devices and shall not omit or disable any security feature, such as a safe relocking assembly or deadlatch, to the detriment of the client=s safety and security.

History Note: Authority G.S. 74F-6; Temporary Adoption Eff. August 13, 2002.

History Note: Authority G.S. 74F-6;

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, September 19, 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 by Friday, September 13, 2002 to the RRC staff, the agency, and the individual Commissioners. 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

September 19, 2002

RULES REVIEW COMMISSION

August 15, 2002

MINUTES

The Rules Review Commission met on Thursday morning, August 15, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, David Twiddy, Laura Devan, 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:

George Hurst	Attorney General's Office
Tom Jackson	NC Division of Parks & Recreation
Doug Baker	DMH/DD/SAS
Jean Stanley	NC Board of Nursing
Helen Wolstenholme	MH/DD/SAS
Cindy Kornegay	MH/DD/SAS
Starleen Robbins	MH/DD/SAS
Lynette Johnson	DOL
John Hoomani	NC Department of Labor
Susan Collins	MH/DD/SAS
Ellie Sprenkel	Department of Insurance
Theresa Shackelford	Department of Insurance
Rebecca Hill	Department of Insurance
Jean Holliday	Department of Insurance
Louis Belo	Department of Insurance
Harry Wilson	State Board of Education
Bud McCarty	DENR/HWS
Elizabeth Kountis	DENR/DWQ
T. Reeder	DENR/DWQ
Steve Coffey	DENR/DSWC
Lisa Martin	NC Home Builders Association
Jeff Manning	DENR/DWQ
Boyd Devane	DENR/DWQ
Dedra Alston	DENR

APPROVAL OF MINUTES

The meeting was called to order at 10:00 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the April 30, 2002, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10 NCAC 14J .0206: MH/DD/SAS – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 32B .0101; .0104; .0105; .0106: NC Medical Board – The agency requested that the rules be returned to the agency. No action was necessary.

21 NCAC 32M .0112: NC Medical Board – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Powell presided over the review of the logs and all rules were approved unanimously with the following exceptions:

Log 187

1 NCAC 40 .0104; .0105; .0106; .0205; .0206; .0207; .0208: Department of Administration – The agency asked that these rules be held over until next meeting. No action was necessary.

15A NCAC 2I .0501; .0502: DENR/Environmental Management Commission – The Commission approved these rules conditioned upon receiving technical change by the end of the day. The technical change was not received. The rules were retained for subsequent action.

15A NCAC 2I .0503: DENR/Environmental Management Commission – The Commission objected to the rule due to lack of statutory authority. In (a), line 7, the rule authorizes and requires the EMC to decide whether to grant or deny the rulemaking petition within 120 days of an EMC committee action on the petition. Originally the rule stated the EMC would act within 120 days of submission of the petition to the agency, then changed it. Under the APA, G.S. 150B-20(b), it was right as originally proposed and the EMC lacks the authority to extend the time. A technical change is also required in (b)(2) at line 16. Please change “reasons or reasons” to “reason or reasons.”

15A NCAC 3K .0104: Marine Fisheries Commission - The Commission objected to the rule due to ambiguity. In (b), it is not clear what standards the Marine Fisheries Director is to use in determining the six-week period for relaying oysters. In (c), it is not clear when the seasons will and will not apply.

15A NCAC 3O .0201: Marine Fisheries Commission – The Commission approved this rule conditioned upon receiving technical change by the end of the day. The technical change was subsequently received.

15A NCAC 6H .0101; .0102; .0103; .0104; .0105: DENR/Soil and Water Conservation Commission – These rules were withdrawn by the agency.

21 NCAC 36 .0211: NC Board of Nursing - The Commission objected to the rule due to ambiguity. In (a)(2), it is not clear what "evidence of education" is required by the Board for an applicant educated in Canada. In (g)(4), it is not clear what is meant by substantiated findings.

21 NCAC 36 .0218: NC Board of Nursing - The Commission objected to the rule due to ambiguity. In (a)(1)(C) and (a)(2)(C), it is not clear how an applicant is supposed to show evidence of “mental and physical health necessary to competently practice nursing.” In (a)(1)(D), (a)(2)(D) and (b)(5), it is not clear when the exception will or will not be granted. In (a)(1)(G), (a)(2)(G) and (b)(8), it is not clear what is meant by "substantiated finding(s)."

23 NCAC 2C .0305: State Board of Community Colleges - The Commission objected to the rule due to ambiguity. In (f), it is not clear what tests are approved by the Systems office or, conversely, what standards the office will use in approving them.

23 NCAC 2D .0319: State Board of Community Colleges - The Commission objected to the rule due to ambiguity. In (a), it is not clear what courses are coded in the Master Course List as Human Resource Development. Commissioner Gray and Commissioner Funderburk were opposed to objection.

23 NCAC 2E .0402: State Board of Community Colleges - The Commission objected to the rule due to ambiguity. In (c)(2)(A), it is not clear what is listed on the "State Board Approved Continuing Education Master Course List". In (c)(2)(B), it is not clear how the number of authorized hours is determined. In (c)(3), it is not clear what standards the Systems President is to use in approving course outlines. Commissioner Gray was opposed to objection.

23 NCAC 2E .0403: State Board of Community Colleges -The Commission objected to the rule due to lack of statutory authority. Paragraph (d) is not consistent with G.S. 115D-5(c) which requires prior approval of all courses offered to captive or co-opted groups at State expense. No exemptions are provided for. Commissioner Gray was opposed to objection.

Log 188

Commissioner Twiddy recused himself from all Department of Insurance rules.

15A NCAC 2B .0225: DENR/Environmental Management Commission – The Commission approved this rule conditioned upon receiving technical change by the end of the day. The technical change was subsequently received. Commissioners Futch and Tart opposed approval.

RULES REVIEW COMMISSION

15A NCAC 2B .0316: DENR/Environmental Management Commission – This rule was approved by the Commission with Commissioners Futch and Tart opposed.

15A NCAC 2H .0103: DENR/Environmental Management Commission – The Commission extended the period of review to determine if the use of the word “primarily” in items (28), (29) and (33) remove facilities from regulation if not “primarily engaged” in the activity and if that is what was intended.

15A NCAC 2H .0106: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. The exception to paragraph (f) at the end of the paragraph is unclear. It is not clear what standards the Director will use in determining that a facility or class of facilities should not be deemed to be permitted in accordance with paragraph (f).

15A NCAC 2H .1301: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. In (c)(3), it is not clear how the duration of a permit is determined.

15A NCAC 2H .1302: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. In (d), it is not clear what standards the Division is to use in making decisions regarding omissions of information.

15A NCAC 2H .1303: DENR/Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. In (a)(1), there is no authority cited for requiring the applicant to pay the cost of advertising.

15A NCAC 2H .1304: DENR/Environmental Management Commission - The Commission approved this rule conditioned upon receiving technical change by the end of the day. The technical change was not received. The rule was retained for subsequent action.

15A NCAC 2H .1305: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity and lack of necessity. In (b), it is not clear what standards the director will use in determining that an activity normally deemed permitted must obtain a permit. In (d), it is not clear what would constitute “sufficient” existing uses. In (c)(6)(D), and (g)(3), (4),(5) and (9), the rule uses that term “preferred” or “preference”. It is not clear to what degree these preferences are meant to be requirements. If they are not requirements they are unnecessary. In (g)(6), the mitigation ratios are unclear. It is not clear what is related to what in what way. It is not clear while ratio is meant by “above ratio”. It is also not clear what factor the 1.5, 2, and 5 are to be multiplied by. In (g)(7), it is not clear how the Director is going to determine what is the “public good”.

15A NCAC 6H .0101; .0102; .0105: DENR/Soil and Water Conservation Commission - the Commission objected to the rules due to ambiguity. Because of the problems in .0103 and .0104 of this section it is not clear what bmps or systems of bmps will be approved or who will be designated as a technical specialist. Commissioner Gray was opposed to the objection of these rules. Commissioner Gray was opposed to objection.

15A NCAC 6H .0103: DENR/Soil and Water Conservation Commission - the Commission objected to rule due to ambiguity. It is not clear what minimum standards and specifications have been determined by the commission as appropriate to provide water quality protection. Commissioner gray was opposed to objection.

15A NCAC 6H .0104: DENR/Soil and Water Conservation Commission – the Commission objected to the rule due to lack of statutory authority and ambiguity. In (a)(3), it is not clear what other groups of bmps have been identified as necessary by the commission. In (b)(1), it is not clear what standards the Division of Soil and Water Conservation is to use in designating specialists. In (b)(3), it is not clear what would constitute a demonstration of “skill and experience.” In (c)(1), it is not clear what minimum qualifications have been established. In (c)(2), it is not clear what skill and experience is required for each category or how it is to be demonstrated. In (c)(4), it is not clear what training the commission has determined the designated specialist must attach. In (d), the interagency group referenced has no authority to adopt binding requirements for technical specialists. Its authority is merely to address questions and provide interpretations. There is therefore no authority for the commission to withdraw designation for failure to comply with its guidance. It is also not clear when the commission will withdraw its designation and when it will not. It is not clear what constitutes “improper work.” Commissioner Gray was opposed to objection.

16 NCAC 6C .0503: State Board of Education – The Commission approved this rule conditioned upon receiving technical change by the end of the day. The technical change was subsequently received.

16 NCAC 6E .0203: State Board of Education – The Commission approved this rule conditioned upon receiving technical change by the end of the day. The technical change was subsequently received.

25 NCAC 1E .0804: State Personnel Commission – This rule was withdrawn by agency.

COMMISSION PROCEDURES AND OTHER BUSINESS

The next meeting of the Commission is tentatively scheduled for Thursday, September 19, 2002.

The meeting adjourned 12:12 p.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #189)
July 20, 2002 through August 20, 2002

RULES REVIEW COMMISSION

DHHS/DIVISION OF MEDICAL ASSISTANCE

Optional 10 NCAC 50B .0102 Amend

DEPARTMENT OF INSURANCE/HOME INSPECTOR LICENSURE BOARD

Definitions 11 NCAC 08 .1101 Amend

Purpose and Scope 11 NCAC 08 .1103 Amend

General Exclusions 11 NCAC 08 .1105 Amend

Air Conditioning 11 NCAC 08 .1112 Amend

Interiors 11 NCAC 08 .1113 Amend

Insulation and Ventilation 11 NCAC 08 .1114 Amend

DEPARTMENT OF LABOR

Elevator, Escalator, Dumbwaiter, and Special Equip 13 NCAC 15 .0701 Adopt

Elevator, Escalator, Dumbwaiter, and Special Equip 13 NCAC 15 .0702 Adopt

Amusement Device Inspection Fee Schedule 13 NCAC 15 .0703 Adopt

Amusement Device Follow Up Inspection Fee 13 NCAC 15 .0704 Adopt

DENR/COASTAL RESOURCES COMMISSION

Definition of 404 Wetlands 15 NCAC 07B .0702 Amend

Permit Eligibility Changes 15 NCAC 07H .1101 Amend

Permit Eligibility Changes 15 NCAC 07H .1201 Amend

Specific Conditions 15 NCAC 07H .1205 Amend

Permit Eligibility Changes 15 NCAC 07H .1301 Amend

Permit Eligibility Changes 15 NCAC 07H .1401 Amend

Permit Eligibility Changes 15 NCAC 07H .2001 Amend

Permit Eligibility Changes 15 NCAC 07H .2101 Amend

Permit Eligibility Changes 15 NCAC 07H .2201 Amend

Permit Eligibility Changes 15 NCAC 07H .2401 Amend

DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION

Periods of Entitlement for all Reserve Components 25 NCAC 01E .0804 Amend

AGENDA

RULES REVIEW COMMISSION

September 19, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Administration -.0104; .0105; .0106; .0206; .0207; .0208 Continued 08/15/02 (DeLuca)
 - B. DENR/Environmental Management Commission – 15A NCAC 2H .0103; .0106; .1301; .1302; .1303; .1305 Objection 08/15/02 (Bryan)
 - C. DENR/Environmental Management Commission – 15A NCAC 2H .1304 Technical Change Not Made 08/15/02 (Bryan)
 - D. DENR/Environmental Management Commission – 15A NCAC 2I .0501; .0502 Technical Change Not Made 08/15/02 (DeLuca)
 - E. DENR/Environmental Management Commission – 15A NCAC 2I .0503 Objection 08/15/02 (DeLuca)
 - F. Marine Fisheries Commission - 15A NCAC 3K .0104 Objection 08/15/02 (Bryan)
 - G. DENR/Soil and Water Conservation Commission – 15A NCAC 6H .0101; .0102; .0103; .0104; .0105 Objection 08/15/02 (Bryan)
 - H. NC Nursing Board – 21 NCAC 36 .0211; .0218 Objection 08/15/02 (Bryan)
 - I. State Board of Community Colleges – 23 NCAC 2C .0305 Objection 08/15/02 (Bryan)
 - J. State Board of Community Colleges – 23 NCAC 2D .0319 Objection 08/15/02 (Bryan)
 - K. State Board of Community Colleges – 23 NCAC 2E .0402; .0403 Objection 08/15/02 (Bryan)
- IV. Commission Business
- V. Next meeting: tentatively scheduled for October 17, 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>				
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. NC Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. NC Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. NC Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Albemarle Home Care & Ginger Parrish, PhD v. NC DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Birgit James v. NC Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Unieca Richardson v. NC DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Donna R Anderson v. NC DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. NC DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. NC Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Mooreville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Eli Maxwell v. NC DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
James Parks v. NC Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Lisa Murphy v. DHHS< Division of Facility Services	02 DHR 0694	Mann	07/26/02	
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02	
<u>ADMINISTRATION</u>				
San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02	
<u>JUSTICE</u>				
Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02	
<i>Alarm Systems Licensing Board</i>				
Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02	

CONTESTED CASE DECISIONS

Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02

Private Protective Services Board

Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
Benita Lee Luckey v. Private Protective Services Board	02 DOJ 0530	Elkins	07/12/02
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02
Barry Snadon, Sr. v. Private Protective Services Board	02 DOJ 0907	Elkins	07/12/02
Gregory Darnell Martin v. Private Protective Services Board	02 DOJ 0916	Morrison	08/06/02
Marvin Ray Johnson v. Private Protective Services Board	02 DOJ 0945	Morrison	08/06/02
Quincey Adam Morning v. Private Protective Services Board	02 DOJ 1084	Morrison	08/06/02

Sheriffs' Education & Training Standards Commission

Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm.	01 DOJ 1587	Chess	07/16/02
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02
Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0609	Lassiter	08/07/02
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02

ENVIRONMENT AND NATURAL RESOURCES

Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02
Helen R. Bass v. County of Durham	02 EHR 0191	Gray	06/26/02
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02
Linda L. Hamrick v. NC DENR	02 EHR 0600	Conner	07/23/02
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0676	Lassiter	08/07/02
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02

ENGINEERS AND LAND SURVEYORS

NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02
---	-------------	-------	----------

OFFICE OF STATE PERSONNEL

Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02		
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02		
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR	93
Berry Eugene Porter v. NC Department of Transportation	01 OSP 0019	Gray	07/03/02		
Linda R. Walker v. Craven County Health Department	01 OSP 0309	Gray	07/12/02		
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02		
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02		
Reginald Ross v. NC Department of Correction	01 OSP 1122/23	Wade	06/28/02		
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR	93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02		
Wade Elms v. NC Department of Correction	01 OSP 1594	Gray	06/27/02		
Wayne G. Whiseman v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR	103
Gladys Faye Walden v. NC Department of Correction	01 OSP 1741	Mann	07/12/02		
Joy Reep Shuford v. NC Department of Correction	01 OSP 2179	Overby	06/25/02		
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02		
Bryan Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theresa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02		
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02		
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR	329
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02		
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02		
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02		
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02		
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02		
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02		
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02		
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02		
Michael Forreest Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02		
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02		
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02		
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02		
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02		
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02		
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02		
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02		
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02		
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02		

1 Combined Cases

CONTESTED CASE DECISIONS

Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt.
Board of Education 02 OSP 1136 Morrison 07/29/02

SUBSTANCE ABUSE PROFESSIONAL BOARD

NC Substance Abuse Professional Certification Board v. Lynn
Cameron Gladden 00 SAP 1573 Chess 05/10/02