

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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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
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13	Labor	Electrical Contractors	18
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for January 2003 – December 2003

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

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

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

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 37
EXTENDING EXECUTIVE ORDER NO. 29**

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

Executive Order No. 29, providing Emergency Relief for Livestock Producers Affected by Hay Shortages Due to Drought for 60-days after its original expiration date.

Executive Order No. 29 will now be effective until January 31, 2003.

Done in Raleigh, North Carolina, this the 26th day of November, 2002.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 38
EXTENDING EXECUTIVE ORDER NO. 88**

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

Executive Order No. 88 regarding the Statewide Flexible Benefits Program, as previously amended, hereby is extended.

This order is effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this 27th day of December 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 39
IMPLEMENTATION OF THE
NORTH CAROLINA EMERGENCY OPERATIONS PLAN
DATED NOVEMBER 2002**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General

Statutes, N.C.G.S. §166A-5(1)a.6) permits the use of services, equipment, supplies and facilities of existing departments, offices and agencies of the State; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) requires the officers and personnel of all such departments, offices, and agencies to cooperate with and extend such services and facilities upon request; and

WHEREAS, the authority to take such actions extends to emergency management and planning purposes; and

WHEREAS, the functions of the State emergency management program include preparation and maintenance of State plans for disasters and the state plans or any parts thereof may be incorporated into executive orders of the Governor; and

WHEREAS, to facilitate a coordinated, effective relief and recovery effort among state and local government entities and agencies, this order is executed.

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

Section 1. All state and local government entities and agencies are requested to cooperate in the implementation of the provisions of the North Carolina Emergency Operations Plan (NCEOP) dated November 2002.

Section 2. I hereby delegate to the Secretary of the North Carolina Department of Crime Control and Public Safety, and/or the Secretary's designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purposes of implementing the said Emergency Operations Plan.

Section 3. The Secretary of the North Carolina Department of Crime Control and Public Safety shall make necessary changes to the North Carolina Emergency Operations Plan with appropriate coordination and shall similarly promulgate additional annexes and appendices as required.

Section 4. The Secretary of the North Carolina Department of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. §143B-476.

Section 5. This executive order is effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the 9th day of January 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 40
NORTH CAROLINA EMERGENCY RESPONSE
COMMISSION**

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

Section 1. Creation

There is hereby created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

- a. Secretary, North Carolina Department of Crime Control and Public Safety, who shall serve as the Chairperson.
- b. Director, Division of Emergency Management, North Carolina Department of Crime Control and Public Safety, who shall serve as the Vice-Chairperson.
- c. Commander, State Highway Patrol, North Carolina Department of Crime Control and Public Safety.
- d. Deputy Secretary, North Carolina Department of Environment and Natural Resources.
- e. Director, Division of Safety and Loss Control, North Carolina Department of Transportation.
- f. Chief, Office of Emergency Medical Services, Division of Facility Services, North Carolina Department of Health and Human Services.
- g. Deputy Director, Training and Inspections Division, Office of State Fire Marshal, North Carolina Department of Insurance.
- h. Director, State Bureau of Investigation, North Carolina Department of Justice.
- i. Director, Division of Public Health, North Carolina Department of Health and Human Services.
- j. Assistant Deputy Commissioner of Labor for Occupational Safety and Health, North Carolina Department of Labor.
- k. President, North Carolina Community College System.
- l. Director, Emergency Programs Division, North Carolina Department of Agriculture and Consumer Services.

In addition to the foregoing, six at-large members from local government and private industry may be appointed by the Governor and serve terms of two (2) years at the pleasure of the Governor.

Section 2. Duties

The Commission is designated as the State Emergency Response Commission as described in the Emergency Planning and Community Right-to-Know Act of 1986 as enacted by the United States

Congress (hereinafter, the "Act") and shall perform all duties required of it under the Act, including, but not limited to, the following:

- a. Appoint local emergency planning committees described under Section 301(c) of the Act and supervise and coordinate the activities of such committees.
- b. Establish procedures for reviewing and processing requests from the public for information under Section 324 of the Act.
- c. Designate emergency planning districts to facilitate preparation and implementation of emergency plans as required under Section 301(b) of the Act.
- d. Designate additional facilities that may be subject to the Act under Section 302 of the Act.
- e. Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of Section 302 of the Act.
- f. Review the emergency plans submitted by local emergency planning committees and make recommendations to the committees on revisions of the plans that may be necessary to ensure coordination of such plans with emergency response plans of other emergency planning districts.
- g. Review plans for preventing, preparing, responding, and recovering from acts of terrorism.

Section 3. Administration

- a. The Department of Crime Control and Public Safety shall provide administrative support and staff as may be required.
- b. Members of the Commission shall serve without compensation but may receive reimbursement for travel and subsistence expenses in accordance with state guidelines and procedures and contingent on the availability of funds.

Section 4. Effect on other Executive Orders

Executive Order 125 is hereby rescinded. All other portions of Executive Orders inconsistent herewith also are rescinded.

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

Done in the Capital City of Raleigh, North Carolina this 21st day of January, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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 11 – DEPARTMENT OF INSURANCE

CHAPTER 08 - ENGINEERING AND BUILDING CODES

Notice of Rule-making Proceedings is hereby given by the Code Officials Qualifications Board/N.C. Dept. of Insurance 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: 11 NCAC 08 .0702, .0706 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-151.12(1); 143-151.13; 143-151.16

Statement of the Subject Matter: Required qualifications of Code enforcement officials.

Reason for Proposed Action: The amendments to these Rules reflects the changes made in occupancy classifications in the State Building Code.

Comment Procedures: Comments from the public shall be directed to Mike Page, NC Department of Insurance, 430 N. Salisbury St., Raleigh, NC 27603, phone (919) 733-3901, and email mpage@ncdoi.net

Statement of the Subject Matter: Requirements for conducting and supervising hearing and speech screening programs.

Reason for Proposed Action: Numerous inquiries from other agencies.

Comment Procedures: Comments from the public shall be directed to John C. Randall, PO Box 1010, Durham, NC 27702, (919) 688-5571.

TITLE 25 - OFFICE OF STATE PERSONNEL

CHAPTER 01 - OFFICE OF STATE PERSONNEL

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01J .1001-.1011 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4(10); 126-10

Statement of the Subject Matter: This Section offers guidance and clarification to state agencies in the implementation of the State Employees' Assistance Program.

Reason for Proposed Action: This Section is proposed to be amended as a result of budgetary constraints and organizational restructuring with the Office of State Personnel.

Comment Procedures: Comments from the public shall be directed to Sharon Howard, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7934 and email showard@ncosp.net.

CHAPTER 01 - OFFICE OF STATE PERSONNEL

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 64 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-304(a)(3)

RULE-MAKING PROCEEDINGS

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01K .0311-.0324 - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: *This Section offers guidance and clarification to state agencies in the implementation of academic assistance as a work force planning and development tool.*

Reason for Proposed Action: *This revision clarifies and updates provisions for use of academic assistance as a work*

force planning and development tool. The revised academic assistance policy will implement strategies during a time of government budgetary constraints. In conformance with recent legislation, these Rules will also address taxability of reimbursements, as well as selective service registration for academic assistance recipients.

Comment Procedures: *Comments from the public shall be directed to Kathi Parker, 1333 Mail Service Center, Raleigh, NC 27699-1333, phone (919) 733-8333 and email kparker@ncosp.net.*

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 01 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 30H .0101-.0102, .0201-.0205, .0301-.0305, .0401-.0404, .0501-.0502, .0601, .0701, .0801, .0901, .1001. Notice of Rule-making Proceedings was published in the Register on July 1, 2002.

Proposed Effective Date: August 1, 2004

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A demand for a public hearing shall be made in writing and received no later than March 4, 2003 to T. Brooks Skinner, Jr., General Counsel, NC Dept. of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301.

Reason for Proposed Action: S.L. 2002-496 14(b), G.S. 143-135.26(11) provides that the State Building Commission shall adopt rules for conducting mediated settlement conferences. The SBC adopted temporary rules effective July 1, 2002.

Comment Procedures: Comments from the public shall be directed to T. Brooks Skinner, Jr., NC Dept. of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301, phone (919) 907-2425, fax (919) 733-9571, and email brooks.skinner@ncmail.net. Comments shall be received through March 19, 2003.

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

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30H - MEDIATED SETTLEMENT CONFERENCES

SECTION .0100 - INITIATING MEDIATED SETTLEMENT CONFERENCES

01 NCAC 30H .0101 PURPOSE OF MANDATORY SETTLEMENT CONFERENCES
Pursuant to G.S. 143-128(g), 143-135.26(11), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0102 INITIATING THE DISPUTE RESOLUTION PROCESS

(a) Any party to a public construction contract governed by G.S. 143, Article 8 and identified in G.S. 143-128(g) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least fifteen thousand dollars (\$15,000) may submit a written request to the public owner for mediation of the dispute.

(b) Prior to submission of a written request for mediation to the public owner, the parties requesting mediation:

- (1) is a prime contractor, must have first submitted its claim to the Project Designer for review as set forth in Exhibit A. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit his written request for mediation to the public owner; or
(2) is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the public owner; or
(3) is the Project Designer, then it must first submit its claim to the public owner to resolve. If the dispute is not resolved with the public owner's involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the public owner for mediation.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0200 - SELECTION OF MEDIATOR

01 NCAC 30H .0201 SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT OF THE PARTIES

The parties may select a mediator certified pursuant to the rules by agreement within 21 days of requesting mediation. The requesting party shall file with the State Construction Office (hereinafter collectively referred to as the "SCO") or public owner if a non-State project a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of

compensation; and state that the mediator is certified pursuant to these Rules.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0202 NOMINATION AND PUBLIC OWNER APPROVAL OF A NON-CERTIFIED MEDIATOR

(a) The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and the SCO or public owner, is otherwise qualified by training or experience to mediate the action.

(b) If the parties select a non-certified mediator, the requesting party shall file with the SCO a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall:

- (1) state the name, address and telephone number of the mediator;
- (2) state the training, experience or other qualifications of the mediator;
- (3) state the rate of compensation of the mediator; and
- (4) state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

The SCO or public owner shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0203 APPOINTMENT OF MEDIATOR BY THE SCO

If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the SCO or public owner and request, on behalf of the parties, that the SCO or public owner appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the SCO or public owner shall appoint a certified attorney mediator. If no preference is expressed, the SCO or public owner may appoint a certified attorney mediator or a certified non-attorney mediator.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0204 MEDIATOR INFORMATION DIRECTORY

To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0205 DISQUALIFICATION OF MEDIATOR

Any party may request replacement of the mediator by the SCO or public owner for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0300 – THE MEDIATED SETTLEMENT CONFERENCE

01 NCAC 30H .0301 WHERE CONFERENCE IS TO BE HELD

Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the project is located. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0302 WHEN CONFERENCE IS TO BE HELD

The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0303 REQUEST TO EXTEND DEADLINE FOR COMPLETION

A party, or the mediator, may request the SCO or public owner to extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the SCO or public owner. The SCO or public owner may grant the request by setting a new deadline for completion of the conference.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0304 RECESSES

The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0305 NO CAUSE FOR DELAY

The mediated settlement conference shall not be cause for the delay of the construction project which is the focus of the dispute.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0400 – DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

01 NCAC 30H .0401 ATTENDANCE

(a) All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the

mediation. Failure of a party to a construction contract to attend the mediation will result in the public owner's withholding of monthly payment to that party until such party attends the mediation.

(b) Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.

(c) Attorneys on behalf of parties may attend the mediation but are not required to do so.

(d) Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0402 FINALIZING AGREEMENT

If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0403 PAYMENT OF FEE

The mediation fee shall be paid in accordance with G.S. 143-128(g).

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0404 FAILURE TO COMPENSATE MEDIATOR

(a) Any party's failure to compensate the mediators in accordance with G.S. 143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by the public owner.

(b) Should the public owner fail to compensate the mediator, it shall hereby be subject to a civil cause of action from the mediator for the one-third portion of the mediator's total fee as required by G.S. 143-128(g).

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0500 – AUTHORITY AND DUTIES OF MEDIATORS

01 NCAC 30H .0501 AUTHORITY OF MEDIATOR

(a) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.

(b) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

(c) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the

absence of agreement, the mediator shall select the date for the conference.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

01 NCAC 30H .0502 DUTIES OF MEDIATOR

(a) The mediator shall define and describe the following at the beginning of the conference:

- (1) The process of mediation;
- (2) The difference between mediation and other forms of conflict resolution;
- (3) The costs of the mediated settlement conference;
- (4) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
- (5) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
- (6) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (7) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1);
- (8) The duties and responsibilities of the mediator and the participants; and
- (9) That any agreement reached will be reached by mutual consent.

(b) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

(c) Declaring Impasse. It is the duty of the mediator timely to determine that an impasse exists and that the conference should end.

(d) Reporting Results of Conference. The mediator shall report to the SCO or public owner within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the SCO or public owner of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The SCO or public owner may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.

(e) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the SCO or public owner.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0600 – COMPENSATION OF THE MEDIATOR

01 NCAC 30H .0601 COMPENSATION OF THE MEDIATOR

(a) By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the

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parties and the mediator provided that the provision of G.S. 143-128(g) are observed.

(b) By Appointment. When the mediator is appointed by the SCO or public owner, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0700 – MEDIATOR CERTIFICATION

01 NCAC 30H .0701 MEDIATOR CERTIFICATION

(a) All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina except when otherwise allowed by the SCO or public owner upon the request of the parties to the mediation. When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

(b) All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the SCO or public owner to mediate any dispute in accordance with these Rules.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0800 – RULE MAKING

01 NCAC 30H .0801 RULE MAKING

These Rules are subject to amendment by rule making by the State Building Commission. These Rules are mandated for State projects when the contracting state entity has not otherwise adopted its own dispute resolution provision. These Rules are optional for all other projects subject to G.S. 143, Article 8.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .0900 – DEFINITIONS

01 NCAC 30H .0901 DEFINITIONS

When the phrase "SCO or public owner" is used in these Rules, "SCO" shall apply to state projects, "public owner" shall apply to non-state public projects.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

SECTION .1000 – TIME LIMITS

01 NCAC 30H .1001 TIME LIMITS

On state contracts, any time limit provided for by these Rules may be waived or extended by the SCO for good cause shown. On non-state contracts, any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed,

the designer of record shall decide all waivers or extensions of time for good cause shown.

Authority G.S. 143-135.26(11); S.L. 2001-496, s. 14(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 30I .0101-.0102. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: March 4, 2003

Time: 1:00 p.m.

Location: Auditorium, Archives and History/State Library Building, 109 East Jones St., Raleigh, NC

Reason for Proposed Action: Legislation enacted in last General Assembly session, S.L. 2001-496, s. 3.1, 14(b).

Comment Procedures: Comments from the public shall be directed to Gretchen Aycock, Assistant Counsel, Department of Administration 1301 Mail Service Center, Raleigh, NC 27699-1301. Please submit all comments in writing by March 19, 2003.

Fiscal Impact

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

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30I - MINORITY BUSINESS PARTICIPATION GOAL

SECTION .0100 - GOOD FAITH EFFORTS

01 NCAC 30I .0101 POLICY

Each public entity which places a public construction project out for bid and which is subject to G.S. 143-128.2 shall require bidders to undertake good faith efforts to recruit minority business participation in the project. Bidders must earn at least 50 points from the good faith efforts listed in Rule .0102 of this Section, or comply with the requirements of G.S. 143-128.2 (c)(1)(a), in order for their bids to be considered responsive. Notwithstanding this Rule, the public entity may require that additional good faith efforts be taken, as indicated in its bid specifications.

Authority G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b).

01 NCAC 30I .0102 POINT VALUES FOR GOOD FAITH EFFORTS UNDERTAKEN.

Good faith efforts and their values include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote

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and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = 10 points.

- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid meetings scheduled by the public owner. Value = 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = 15 points.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. Value = 20 points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10 NCAC 03L .1302. Notice of Rule-making Proceedings was published in the Register on November 1, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: March 25, 2003

Time: 2:00 p.m.

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

Reason for Proposed Action: Home & Hospice Care of North Carolina submitted a petition to the NC Medical Care Commission to amend this Rule to permit additional time for physician counter-signatures on verbal orders. The Commission agreed to initiate permanent rule-making proceeding to amend this Rule and is now proposing to adopt these changes.

Comment Procedures: Comments from the public shall be directed to Mark Benton, Chief of Budget & Planning/Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3750, fax (919) 733-2757, and email mark.benton@ncmail.net. Comments shall be received through March 24, 2003.

Fiscal Impact

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

CHAPTER 03 - FACILITY SERVICES

SUBCHAPTER 03L - THE LICENSING OF HOME CARE AGENCIES

SECTION .1300 - PHARMACEUTICALS AND MEDICAL TREATMENT ORDERS

10 NCAC 03L .1302 ORDERS

(a) Orders for pharmaceuticals and medical treatments or orders for in-home aide services when required, shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records. Care may commence in the interim with evidence of a verbal order.

(b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, or other person authorized by state law to receive such ~~orders, orders recorded and signed by~~ The order shall include the date and signature of the person receiving ~~the order #~~ and ~~shall be~~ countersigned by the physician or other person authorized by State law to prescribe ~~within 30 days, in accordance with the agency's policies and procedures.~~

(c) Verbal orders for allied health services other than nursing or in-home aide services when orders are required, shall be given to either a licensed nurse or the appropriate

Authority G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b).

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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health ~~professional, professional.~~ The order shall include the date and signature of the person receiving the order, shall be recorded in the client record and signed by the person receiving it and shall be countersigned by the physician or other person authorized by State law to prescribe ~~within 30 days from the time given in accordance with the agency's policies and procedures.~~ (d) The agency shall develop and implement written policies and procedures for obtaining countersignatures on verbal orders within 60 days which include follow-up procedures if initial efforts by the agency are not successful.

Authority G.S. 131E-140.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 29 - LOCKSMITH LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Locksmith Licensing Board intends to adopt the rules cited as 21 NCAC 29 .0101-.0102; .0201-.0205; .0401-.0405; .0501-.0504. Notice of Rule-making Proceedings was published in the Register on September 3, 2002, November 15, 2002, December 16, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: March 17, 2003

Time: 11:00 a.m.

Location: NC Psychological Association, 1004 Dresser Court, Raleigh, NC 27609

Reason for Proposed Action: Temporary rules were adopted beginning in August 2002 by the newly created Board. These temporary rules must now be converted to permanent rules.

Comment Procedures: Written comments should be submitted to Jim Scarborough, PO Box 10972, Raleigh, NC 27605. Phone (919) 838-8782, Fax: (919) 833-5743. Comments should be submitted by March 19, 2003.

Fiscal Impact

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

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.

Authority G.S. 74F-5.

21 NCAC 29 .0102 MEETINGS

(a) Frequency. The Board shall meet at least twice annually and at other times on a regular basis 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.

Authority G.S. 74F-5.

SECTION .0200 - EXAMINATION

21 NCAC 29 .0201 EXAMINATION FEE

The examination fee shall be two hundred dollars (\$200.00) and shall accompany the examination registration form. If the applicant elects to take the exam at a commercial testing center that charges a fee, then the applicant retains responsibility for paying the additional fee assessed by the testing center.

Authority G.S. 74F-6; 74F-9.

21 NCAC 29 .0202 APPLICATION REQUIREMENTS

Applicants must submit requests for examination on the registration form approved by the Board. The application must be submitted to the Board's office by the published deadline for the examination session requested.

Authority G.S. 74F-6; 74F-7.

21 NCAC 29 .0203 MINIMUM PASSING SCORE

The minimum passing score for each examination session will be published along with the examination session schedule.

Authority G.S. 74F-6; 74F-7.

21 NCAC 29 .0204 REQUIREMENTS OF EXAMINEES

Applicants appearing at an examination session shall present a valid photo ID to the examination proctor before the beginning of the examination session. Applicants at examination sessions must follow all instructions given by the proctors. Failure to do so may result in the examination results being invalidated.

Authority G.S. 74F-6; 74F-7.

21 NCAC 29 .0205 FAILURE TO ATTEND SCHEDULED EXAMINATION SESSION

Applicants who fail to appear for a scheduled examination session forfeit their examination fee and must submit a new registration form along with the required fee for a different session. The Board may waive the additional examination fee if it finds that the applicant's failure to attend as scheduled was the result of a genuine hardship or emergency.

Authority G.S. 74F-6; 74F-7.

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.

Authority G.S. 74F-6.

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 full criminal history report 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; or
- (2) The Board receives information of a possible conviction.

(b) The individual 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 law.

(d) These categories are as follows:

- (1) Category I. The following felonies, including but not limited to:
 - (A) Homicide or attempted murder; or
 - (B) Sexual assault, including but not limited to attempted sexual assault, rape, indecency with a child, molestation, and sexual assault of a child.
- (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) 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 (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 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 (misdemeanor);
- (C) Reckless damage;
- (D) Resisting arrest;
- (E) Larceny (misdemeanor);
- (F) Prostitution;
- (G) Criminal mischief (misdemeanor);
- (H) Driving while license suspended or revoked; and
- (I) Falsification of government documents (misdemeanor);

(5) Category V. Three or more Category V convictions (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.

(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;
- (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 immediate revocation of license.

PROPOSED RULES

- (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 applicant.
- (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 immediate license revocation and reinstatement of license upon the same standard listed in this Rule for applicant.
- (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 immediate license revocation and reinstatement upon the same standards listed in this Rule for applicant.
- (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 licensure. A licensed locksmith convicted of a Category V offense may be subject to immediate license revocation and reinstatement upon the same standards listed in this Rule for applicant.

(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) 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.

(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 3 and the North Carolina Administrative Code.

Authority G.S. 74F-6; 74F-7.

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 under Rule .0405 of this Section.

Authority G.S. 74F-6; 74F-7.

21 NCAC 29 .0404 FEES

The license issuance fee shall be one hundred dollars (\$100.00). The license issuance fee shall accompany the application for licensure. In the event that licensure is denied the applicant, the fee shall be refunded.

Authority G.S. 74F-6; 74F-7; 74F-9.

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 recognized professional associations;
- (5) Receipts for directory advertisements purchased under relevant headings;
- (6) Receipts from recognized wholesalers for supplies and tools of the trade;
- (7) Itemized customer invoices;
- (8) Educational certificates earned; and
- (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 may still be required to pass the portion of the examination testing understanding of the Statute and the obligations of licensed locksmiths.

Authority G.S. 74F-6; 74F.

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. Failure to comply will result in disciplinary action by the Board, including warnings, public rebukes, remedial educational requirements, suspension of license, refusal to renew license, or revocation of license.

Authority G.S. 74F-6.

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. Examples include, but are not limited to the following:
 - (a) Representing to a client that non-restricted or widely available keys (whether stamped "Do Not Duplicate" or not) provide any measure of assurance against unauthorized duplication; or
 - (b) Selling a used product as new.
- (6) Locksmiths shall avoid using any improper or questionable means of soliciting business. Examples 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; and

- (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.

Authority G.S. 74F-6.

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 record the identity of the customer for all service calls in which the locksmith opens a vehicle, building, room or secured container, or originates a key or in any other fashion provides the customer with access to any such property.
- (4) Locksmiths shall not supply an existing key or combination for an architectural lock without verifying the identity and authority of the client to have it. This Rule applies to off-site (shop) service as well as on-site service. Unless the locksmith can verify the origin of the lock and the authority of the client to obtain the requested key or combination, the locksmith 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 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.

PROPOSED RULES

- (b) The locksmith shall refuse to provide service when there is an unresolved dispute of ownership or authority. Only instructions from a uniformed law enforcement officer or a court order shall be accepted as resolution of any such dispute.
- (7) Locksmiths shall 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.
- (8) 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 or an apprentice training under a lawfully practicing locksmith.

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. Locksmiths shall not introduce random keys into a master keyed system 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). Locksmiths shall not key mechanical lock cylinders in this fashion 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. Examples of violations 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; and
 - (c) Leaving multiple chambers of a mechanical lock empty.
- (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.

Authority G.S. 74F-6.

21 NCAC 29 .0504 TECHNICAL INTEGRITY

Authority G.S. 74F-6.

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 01 – DEPARTMENT OF ADMINISTRATION

Rule-making Agency: Department of Administration, State/Construction Office

Rule Citation: 01 NCAC 30A .0406

Effective Date: February 1, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143-135.26; S.L. 2001-496, s. 11

Reason for Proposed Action: The General Assembly granted the SBC authority to draft a temporary rule to insure that the procedures for review for Fire Safety Requirements were clear. These reviews are ongoing in most state construction projects and this rule is critical to that process.

Comment Procedures: Written comments shall be directed to T. Brooks Skinner, Jr., NC Dept of Administration, 1301 MSC, Raleigh, NC 27699-1301, Phone: (919) 807-2425, Fax: (919) 733-9571, email: brooks.skinner@ncmail.net.

01 NCAC 30A .0406 REVIEW BY STATE CONSTRUCTION OFFICE FOR FIRE SAFETY REQUIREMENTS

In all cases where plans are submitted to the State Construction Office pursuant to G.S. 58-31-40:

- (1) The owner shall submit complete construction documents to the State Construction Office in accordance with the planning procedures in the State Construction Manual.
(2) Pursuant to G.S. 58-31-40(c), should an owner request review and final approval of the plans by the State Construction Office and the Department of Insurance and if the plans have not been approved by the Commissioner of Insurance within 60 days of submittal, such review and final approval shall be conducted by the State Construction Office within 30 days.
(3) No type of structural work may be initiated by the owner without prior approval of the State Construction Office.

History Note: Authority: G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

Rule-making Agency: Dept. of Administration, State Construction Office

Rule Citation: 01 NCAC 30J .0101-.0103, .0201-.0202, .0301-.0306

Effective Date: February 1, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143-135.26; S.L. 2001-496, s. 11

Reason for Proposed Action: The effective date of the legislation which allowed the use of Construction Manager at Risk contracts in state construction was effective January 1, 2002. It is important that these Rules be in place as there are numerous CM at Risk contracts currently in use.

Comment Procedures: Comments from the public shall be directed to T. Brooks Skinner, Jr., NC Dept. of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301, phone (919) 807-2425, fax (919) 733-9571, and email brooks.skinner@ncmail.net.

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30J - CONSTRUCTION MANAGER-AT-RISK SELECTION PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 30J .0101 AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by public law (G.S. 143-135.26) to perform a multiplicity of duties with regard to the State's capital facilities development and management program. In the specific area of State capital improvement project construction manager-at-risk selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the construction manager-at-risk selected for each State capital improvement project has the qualifications and experience necessary for that capital improvement project. The SBC is responsible and accountable for the final selection of the construction manager-at-risk. The exceptions are the University of North Carolina and the General Assembly, which shall be responsible and accountable for the final selection of construction manger-at-risk for capital projects in which they are the funded agencies.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0102 POLICY

It is the policy of the SBC to select construction manager-at-risk for State capital improvement projects as defined in G.S. 143-

128.1, based on criteria contained herein and to make available to every firm, duly licensed as a general contractor in the State of North Carolina, the opportunity to be considered for providing construction management-at-risk services for those departments and agencies under its jurisdiction. It is also the policy of the SBC to select a construction manager-at-risk for State capital improvement project who is in compliance with the minority business participation requirements as prescribed in G.S. 143-128.2. The SBC considers that the selection of competent construction manager-at-risk is vital to providing the State of North Carolina with the best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of construction managers-at-risk. The construction manager-at-risk shall use standard form of contract for the owner, construction manager-at-risk, and first-tier subcontractor authorized by the SBC.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0103 DEFINITIONS

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

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matter presented to the SBC. The individual so designated for purposes of these Rules may have other titles within his agency but shall carry out the duties assigned herein to the capital projects coordinator. Whenever the capital projects coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
- (2) "Construction Manager-at-Risk" means a person, corporation, or entity that provides construction management at risk services.
- (3) "Construction Management-at-Risk Services" means services provided by a person, corporation, or entity that:
 - (a) provides construction management services for a project throughout the preconstruction and construction phases;
 - (b) who is licensed as a general contractor; and
 - (c) who guarantees the cost of the project.
- (4) "First-Tier Subcontractor" means a subcontractor who contracts directly with the Construction Manager-at-Risk.
- (5) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his/her designee.
- (6) "Funded agency" means the department, agency, authority or office that is named in the

legislation appropriating funds for the design and/or construction project.

- (7) "Using agency" means the subdivision of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus or similar body, as determined by the administrative head of the funded agency.
- (8) "Minority Business" means:
 - (a) in which at least 51 percent is owned by one or more minority persons, or in the case of corporation, in which at least 51 percent of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - (b) of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- (9) "Socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

SECTION .0200 - PROJECT INFORMATION

01 NCAC 30J .0201 PROJECT DESCRIPTION

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring construction management-at-risk services. This information should be provided to the State Construction Office for publication on State Construction Office website. The Capital Projects Coordinator is responsible for prompt initiation of the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0202 PUBLIC ANNOUNCEMENT

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for construction management-at-risk services, a designated contact person in the using agency and the closing date on the State Construction Office website. Public announcement is required prior to Construction Manager-at-Risk selection. The closing date for being considered for construction

management-at-risk services shall be minimum of 21 days from date of publication on the State Construction Office website. Responses to RFP for each project must be received by the Capital Project Coordinator prior to a firm's being considered for construction management-at-risk services.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

SECTION .0300 - SELECTION OF CONSTRUCTION MANAGERS AT RISK

01 NCAC 30J .0301 CONSTRUCTION MANAGER-AT-RISK QUALIFICATIONS

All firms desiring to provide construction management-at-risk services shall submit all information required in the Request for Proposal (RFP) for the owner's review and evaluation. Firms shall be required to submit evidence of compliance with the minimum requirements of the RFP. Each firm shall meet the minimum requirements of the RFP prior to being considered by the selection committee as one of the firms most qualified to perform construction manager-at-risk services. Failure of any firm to furnish all necessary information in the RFP shall disqualify response.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0302 PRE-SELECTION COMMITTEE

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design or construction professional. The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his submission that the established rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0303 SELECTING CRITERIA

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration in the evaluation of the Proposals such factors as:

- (1) Workload that is fully able to accommodate the addition of this project;

- (2) Record of successfully completed projects of similar scope without major legal or technical problems;
- (3) Previous experience with the Owner, a good working relationship with Owner representatives, have completed projects in a timely manner and have performed an acceptable quality of work;
- (4) Key personnel that have appropriate experience and qualifications;
- (5) Relevant and easily understood graphic or tabular presentations;
- (6) Completion of CM-at-Risk projects in which there was little differences between the GMP and final cost;
- (7) Projects that were completed on or ahead of schedule;
- (8) Recent experience with project costs and schedules;
- (9) Construction administration capabilities;
- (10) Proximity to and familiarity with the area where the project is located;
- (11) Quality of compliance plan for minority business participation as required by G.S. 143-128.2; and
- (12) Other factors that may be appropriate for the project.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0304 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR UNC SYSTEM PROJECTS

In selecting Construction Manager-at-Risk for its projects, the UNC system shall comply with the policies and selection procedures outlined herein, except that:

- (1) the pre-selection committees need not include a representative of the State Construction Office; and
- (2) the final selection of Construction Manager-at-Risk shall be made by the Board of Trustees of the funded institution.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0305 CONSTRUCTION MANAGER-AT-RISK SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS

Upon receipt of a letter from the capital projects coordinator listing three firms in priority order along with recommendations and selection information, as requested by the SBC, the secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting. The capital projects coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

TEMPORARY RULES

- (1) Affirm the selection of the firms in the priority order recommended by the state or agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

Rule Citation: 10 NCAC 20A .0102; 20C .0119; .0205-.0206; .0603-.0604; .0606

Effective Date for Temporary Rule: January 26, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143-545.1; 143-546.1

Reason for Proposed Action for Temporary Rule: *To control expenditures in services provided to clients, the Division has modified priority categories that determine when an individual will receive services; rates of payment for providing training services; and services covered by or exempt from the financial needs test. These requirements affect the public and must be included in rules.*

Public Hearing:

Date: March 4, 2003

Time: 10:00 a.m.

Location: 805 Ruggles Drive, The Haywood Building – Dix Campus, Raleigh, NC 27611

Proposed Effective Date for Permanent Rule: August 1, 2004

Reason for Proposed Action: *To control expenditures in services provided to clients, the Division has modified priority categories that determine when an individual will receive services; rates of payment for providing training services; and services covered by or exempt from the financial needs test. These requirements affect the public and must be included in rules.*

Comment Procedures: *Comments may be presented orally or in writing at the hearing. Oral statements may be limited at the discretion of the hearing officer. Written comments may also be submitted to Steven E. Hairston, Division of Vocational Rehabilitation Services, 2801 Mail Services Center, Raleigh, NC 27699-2801. To obtain additional information or indicate need for alternative communication format contact Steven E. Hairston in writing or by phone (919) 855-3529 or TDD (919) 733-5924. In addition, a fiscal note is available upon written request from the same address. The deadline for receiving written comments is April 21, 2003.*

Fiscal Impact

State 10 NCAC 20C .0119; .0205 - .0206

Local

Substantive (≥\$5,000,000) 10 NCAC 20C .0119

None 10 NCAC 20A .0102; 20C .0603-.0604; .0606

CHAPTER 20 - VOCATIONAL REHABILITATION

SUBCHAPTER 20A – PROGRAM RULES

SECTION .0100 - INFORMATION REGARDING RULES

10 NCAC 20A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

01 NCAC 30J .0306 CONTRACT NEGOTIATION

After the three have been notified of the selection action by the SBC or the University of North Carolina, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency shall discuss with the selected construction manager-at-risk appropriate services and information about the project. The State Construction Office shall request in writing a detailed fee proposal from the selected Construction Manager-at-Risk. The State Construction Office in coordination with the capital projects coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process will be repeated with the third-ranked Construction Manager-at-Risk. If a fee still cannot be agreed upon, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or call shall be made for the capital projects coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process shall continue until a fee has been determined that is agreed to by the State Construction Office, the using agency and the Construction Manager-at-Risk. Following execution of the contract, the State Construction Office shall publish on the State Construction Office website, the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Editor's Note: *This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.*

Rule-making Agency: DHHS – Division of Vocational Rehabilitation Services

- (1) "Acceptance for services" means that the priority category to which an eligible individual is assigned is being served by the Division.
- (2) "Application date" means the date that a client completes and signs an application for services with the Division.
- (3) "Client" means an individual who has applied for or is receiving services from the Division.
- (4) "Designated State Unit" means the state vocational rehabilitation division that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency.
- (+)(5) "Division" means the Division of Vocational Rehabilitation Services of the Department of Health and Human Services.
- (-)(6) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (7) "Division's Fixed Rate" means the rate that the Division will pay for clients to receive training services.
- (a) The Division's fixed rate for post-secondary, graduate, professional and summer school is determined by calculating the median rate for tuition at the 16 campus public
- (b) University system as approved by the North Carolina General Assembly in October 2001;
- (c) The Division's fixed rate for the community college system is the approved rate for the 58 community college system as approved by the North Carolina General Assembly in October 2001.
- (-)(8) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division Director and chaired by the Chief of Operations to review for approval or disapproval:
- (a) amounts for residence or job site modifications that exceed standard amounts specified in 10 NCAC 20C .0316; and
- (b) purchase of vehicles as set forth in 10 NCAC 20C .0316.
- (9) "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements under 34 C.F.R. 361.42(a).
- (10) "Extended period of time" means that the individual will require at least 9 months to complete the services on the Individualized Plan for Employment (IPE) or will require one of the following services permanently in order to accomplish their job choice and maintain employment:
- (a) Personal Assistance Services; or
- (b) Rehabilitation Technology; or
- (c) Extended Services.
- The required minimum of 9 months does not include the standard amount of time required to complete a post-secondary training curriculum, but does include extra time required to complete the training curriculum due to disability related reasons.
- (11) "Extended Services" means ongoing support services that are needed to maintain an individual with a most significant disability in supported employment. These services are provided by a State agency, a private nonprofit organization, employer, or other appropriate resource from funds other than funds received by the designated State unit to provide supported employment training. Extended Services begin after the individual has made the transition from support provided by the designated State unit. Extended Services also includes services required by individuals with a most significant disability who received work adjustment and job coaching where a supported employment vendor was not available.
- (4)(12) "Functional Capacity Areas" means the areas of ability which are impacted by an individual's disability and used to determine serious limitations to employment for an eligible individual with a disability. For the purposes of this Section:
- (a) communication;—"Communication" means the ability to use, give and/or receive information;
- (b) interpersonal skills;—"Interpersonal skills" means the ability to establish and/or maintain appropriate interactions with others;
- (c) mobility;—"Mobility" means the ability to move from place to place;
- (d) self-care;—"Self-care" means the ability to plan and/or perform activities of daily living;
- (e) self-direction;—"Self direction" means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to self-care, socialization, and working independently;
- (f) work skills; and—"Work skills" means the ability to learn and /or perform work functions; and
- (g) tolerance.—"Work Tolerance" means the ability to sustain the required level of work function.
- (-)(13) "Individual with a "severe significant disability" has the meaning specified in P.L.

- 102-569, Section 7(15) which is incorporated by reference.
- (6)(14) "Individual with a most ~~severe~~significant disability" means an individual with a ~~severe~~significant disability who meets all aspects of the definition for significant disability, and whose impairment seriously limits three or more functional ~~capacities~~capacity areas in terms of an employment outcome.
- (15) "Individualized Plan for Employment" (IPE) means a written document prepared on forms provided by the designated state unit for each eligible individual accepted for services which outlines what is required to achieve an employment outcome.
- (16) "Intercurrent illness" means an acute medical condition that arises during the rehabilitation process and constitutes a barrier to the achievement of an employment outcome.
- (17) "Multiple services" means two or more primary services.
- (18) "Optional fees" are fees charged to curriculum and continuing education students for items not covered by tuition and registration fees.
- (a) Specific fees. Fees charged to students for items required for individual courses that are considered to be in addition to normal supplies and materials the college provides for students such as tools, uniforms, insurance and certification fees.
- (b) Student activity fee. A fee charged to students to support student activities. The student activity fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.
- (c) Computer use and technology fee. A fee charged to students to support the procurement, operations and repair of computers and other institutional technology including supplies and materials that accompany use of the technology. The fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.
- (d) Parking fee. A fee charged to a student for use of the college's parking facilities.
- (19) "Order of Selection" means the priority system under which the Division provides vocational rehabilitation services to eligible individuals with disabilities when sufficient resources are not available for the Division to serve all eligible individuals with disabilities.
- (20) "Order of Selection – Established" means that the order of selection priority system has been approved by the Rehabilitation Services Administration and is a part of the Division's State Plan.
- (21) "Order of Selection – Implemented" means that the Division Director has determined that the Division does not have sufficient resources to provide services to all eligible individuals. During implementation all eligible individuals within a priority category may not receive services.
- (7)(22) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.
- (23) "Permanent functional limitation" means restrictions in activity or function related to employment imposed by the disability that:
- (a) is not likely to be corrected through surgical intervention or medical treatment; and
- (b) will require on-going treatment because impediments related to the disability will not be removed through the provision of physical and mental restoration services.
- (24) "Personal Assistance Services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.
- (25) "Primary Services" means any one of the following services:
- (a) Physical and mental restoration services: Diagnosis and treatment services of impairments excluding treatment of intercurrent illnesses.
- (b) Counseling and guidance: Substantial counseling and guidance that addresses separate and specific objectives with documentation of regular appointments and progress towards objectives distinct from the general counseling relationship that exists between the rehabilitation counselor and the eligible individual with a disability throughout the rehabilitation process.
- (c) Vocational and other training: Personal and vocational adjustment training, post-secondary, and on-the-job training.
- (d) Job Related Services: Job search, placement assistance, job retention services, follow-up services, and follow-along services.
- (e) Rehabilitation Technology: Rehabilitation engineering, assistive technology devices, and assistive technology services.

SUBCHAPTER 20C – PROGRAM RULES

SECTION .0100 - GENERAL POLICIES

- (26) "Priority category" means the order in which eligible individuals with disabilities will be served. These categories are based on refinement of the three criteria in the definition of "individual with a significant disability".
- ~~(8)~~(27) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.
- (28) "Rehabilitation technology" means services that systematically apply technologies, engineering methodologies, or scientific principles to meet the need of and address the barriers confronted by an eligible individual with a disability. Rehabilitation technology includes telecommunication, sensory, and other technological aids and devices.
- (29) "Seriously limits" means that due to a significant physical or mental impairment, one or more of an eligible individual's functional capacity areas is restricted to the degree that the individual requires accommodations not routinely made for other individuals and/or interventions that cannot be easily achieved, and that will be required permanently in order for the individual to obtain and maintain successful employment.
- (30) "State Plan" means the Plan for vocational rehabilitation services submitted by the Division and approved by the Rehabilitation Services Administration.
- ~~(9)~~(31) Transferable work skills means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.
- (32) "Waiting list" means a list of eligible individuals that establishes the order in which these individuals will be provided services once resources are available if the Division has implemented an Order of Selection. Individuals are placed on the list after eligibility for services has been determined by their priority category and date of application.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 143-545.1; 150B-21.6; P.L. 102-569, s. 7(15); s. 101(a)(5)(A); Eff. February 1, 1976; Amended Eff. February 1, 1996; October 1, 1994; April 1, 1988; Temporary Amendment Eff. May 1, 2002; July 3, 2001; Amended Eff. August 1, 2002; Temporary Amendment Eff. January 26, 2003.

10 NCAC 20C .0119 RATES OF PAYMENT

(a) Policies governing rates of payment for all purchases, vocational rehabilitation services, and current rates of payment may be reviewed 8 a.m. to 5 p.m., Monday through Friday, at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina. Vendors providing any services authorized by the state agency shall agree not to make any charge to, or accept payment from, the individual receiving services from the Division or the individual's family for such services unless the amount for such service charge or payment is previously known to, and where applicable, approved by the Division.

(b) The Division's rate of payment for post secondary education, graduate, professional and summer school will not exceed the Division's fixed rate charged for the public university and professional schools system and the rate charged for the community college system for tuition and fees as approved by the North Carolina General Assembly October 2001.

- (1) Proprietary for profit vocational and trade schools or other training programs that offer curriculums comparable to those offered through the community college system will not exceed the rate for payment established for the community college system.
- (2) Proprietary for profit vocational and trade schools or other training programs that offer an accelerated or condensed curriculum or those training programs that offer training in areas not offered through the community college system will not exceed the Division's fixed rate established for two semesters in the public university system.
- (3) Proprietary for profit vocational and trade schools and any other vocational or trade program that does not operate on a semester system or has varying program lengths up to one year will not exceed a prorated monthly rate based on the Division's fixed rate established for two semesters and two sessions of summer school in the public university system.
- (4) Proprietary for profit vocational and trade schools and any other vocational or trade programs that does not operate on a semester system or has a varying program length that is 12 months or longer will not exceed the Division's fixed rate established for two semesters and two sessions of summer school in the public university system.
- (5) For those individuals who are North Carolina residents and choose to attend training programs out-of-state, the Division's rate of payment is limited to the Division's fixed rate specified this Paragraph.

(c) The Division's rate of payment for optional fees at the community college system shall not exceed the amount approved by the local community college boards.

(d) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Rule .0205, Paragraph (a)(9) of this Section may be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.46; Eff. February 1, 1976; Amended Eff. May 1, 1990; Temporary Amendment Eff. January 26, 2003; May 1, 2002.

SECTION .0200 - ELIGIBILITY

10 NCAC 20C .0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206 of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services to clients eligible for services or to clients eligible for extended evaluation or trial work experiences:

- (1) physical and mental restoration;
- (2) maintenance;
- (3) transportation;
- (4) occupational license;
- (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;
- ~~(6) books, training supplies, and materials required for courses in post-secondary educational facilities;~~
- ~~(7)(6) services to members of the individual's family necessary to the adjustment or rehabilitation of the individual with disabilities;~~
- ~~(8)(7) rehabilitation technology including vehicular, home modifications, telecommunications, sensory, and other technological aids and devices;~~
- ~~(9) recruiting and training to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement, and other public service employment;~~
- ~~(10)(8) post-employment services necessary to assist individuals with disabilities in maintaining suitable employment (other than those services in Paragraph (c)(1) of this Rule which are provided without regard to financial need);~~
- ~~(11)(9) vocational and other training services, books, tools, and other training materials;~~
- ~~(12)(10) other goods and services expected to benefit an individual with disabilities in obtaining employment or achieving the individual's independent living goals; and~~

~~(13)(11) non-assessment services for eligible individuals receiving vocational rehabilitation services through trial work experiences or extended evaluation; and~~

~~(12) personal and vocational adjustment training and On-the Job Training that does not conflict with Federal and State wage and hour laws.~~

(b) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Paragraph (a)(9) of this Rule may be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

(c) Physical and mental restoration as noted in Paragraph (a)(1) of this Rule will only be provided to the extent that financial support is not readily available from a source other than the designated state unit such as through health insurance or a comparable service or benefit as defined in 34 CFR 361.6(b)(10).

~~(e)(d)~~ The financial needs test shall not apply as a condition for furnishing the following:

- (1) services exempt from the financial needs test under 34 C.F.R. 361.54;
- (2) ~~interpreter services for the deaf and~~ foreign language interpreter/translator services for individuals who are unable to understand either verbal or written information presented by the Division;
- ~~(3) notetaker services for individuals enrolled in post-secondary training programs; ;~~
- ~~(4) tuition for:~~
 - ~~(A) on-the-job training;~~
 - ~~(B) community rehabilitation program training;~~
 - ~~(C) community college/college parallel programs up to the catalog rate;~~
 - ~~(D) vocational training at:~~
 - ~~(i) community college vocational programs up to the catalog rate; and~~
 - ~~(ii) proprietary for profit vocational and trade schools up to a limit of four thousand dollars (\$4,000) per training program; and~~
 - ~~(E) post-secondary education up to the maximum rate charged for the public university system-~~
- ~~(5) fees required in post-secondary educational facilities up to the maximum rate charged for the public university system; training supplies and materials required for training in division-operated facilities and the training programs listed in Paragraphs (b)(4)(A) and (B) of this Rule; and~~
- ~~(7)(3) as a condition for furnishing any vocational rehabilitation service to individuals determined~~

eligible for Social Security benefits under Titles II or XVI of the Social Security Act; and
~~(8)(4)~~ all services and equipment provided by staff of the Division.

~~(e) The Division may grant an exception to the rate for tuition and required fees for postsecondary education specified in Paragraphs (b)(4)(E) and (b)(5) of this Rule when necessary to accommodate the special training needs of individuals with severe disabilities who must be enrolled in high-cost, special programs designed for students with severe physical disabilities.~~

(e) The Division may grant an exception to the rate for tuition for post-secondary education specified in Rule .0119 of this Section when accommodations for the special training needs of individuals with significant disabilities are included in the tuition rate.

History Note: Authority G.S. 143-545A; 143-546A; 34 C.F.R. 361.40; 34 C.F.R. 361.41; 34 C.F.R. 361.47; 34 C.F.R. 364.59;

Eff. February 1, 1976;

Amended Eff. February 1, 1996; October 1, 1994; March 1, 1990;

Temporary Amendment Eff. January 26, 2003; May 1, 2002.

10 NCAC 20C .0206 FINANCIAL NEEDS TEST

(a) A client's financial need shall be determined by application of the General Assembly's financial eligibility scale for non-medicaid medical programs which sets the limit of net annual income for families of various sizes and by consideration of other available assets that could be used to pay for the cost of rehabilitation services. The General Assembly's eligibility financial scale is contained in the annual appropriation bill. In applying the General Assembly's financial eligibility scale, the Division shall follow the provisions of this Rule to determine net monthly income and family size. ~~The General Assembly's eligibility financial scale is usually found in the current appropriations bill as follows: S.L. 1998, c. 212, s. 42.33.~~ Financial information is obtained to determine the client's financial eligibility to receive services listed in Paragraph (a) of Rule.0205 of this Section. Financial information obtained may include check stubs, State and Federal income tax forms and other information to document income or other financial resources. If the client does not have check stubs or tax returns, the client will be required to complete a verification form signed by their last employer, the individual who supports them, or the agency representative who processes the client's public support. Whenever the financial situation of the client is unclear or there is a question regarding the resources of the client, the Unit Manager or Facility Director will be consulted for analysis or application of client financial information.

(b) The time period to be used as the basis for computing net monthly family income is the month prior to the planning of any service which is based on the individual's financial eligibility. Net monthly family income shall be recomputed at any time there is a change in the family's ~~income.~~ income, but at least annually.

(c) A client's family shall include only the client if any of the following conditions apply:

- (1) The client is 23 years of age or older;
- (2) The client is a ward of the court;
- (3) The client is an emancipated minor;

(4) The client is a veteran of the United States Armed Forces;

(5) The client is under 23 years of age and can produce a tax return from the year prior to application for services indicating self-support, or receipts, records for basic living expenses such as rent and utilities for a minimum of three consecutive months, pay stubs, or other information such as receipts of medical payments, payment of health insurance premiums, child care payment receipts, and legally mandated payments that indicate that he or she is independently self-supporting.

~~(e)(d)~~ A client's family shall include the client and the following persons living in the same household as the client if the client is 18 years of age or older and is not being claimed as a dependent by the parents for tax purposes or if the client is less than 18 years of age and is ~~married.~~ married if the client is married:

- (1) the client's spouse;
- (2) the client's children under 18~~23~~ years of age; and
- (3) other individuals related to the client by blood, marriage, or adoption if the other individuals have no ~~income.~~ income.
- ~~(4) the client's children of any age who are temporarily living away from the household while attending school if they are being claimed as dependents by the client for tax purposes.~~

~~(d)(e)~~ A client's family shall include the client and the following persons living in the same household as the client if the client is less than 18~~23~~ years of age and is not married or if the client is 18~~23~~ years of age or older and is being claimed as a dependent by the parents for tax ~~purposes.~~ purposes regardless of place of residence:

- (1) the client's parents, not including step-parents;
- (2) siblings or half-siblings of the client, but not step-siblings, if the siblings are unmarried and less than 18~~23~~ years of age;
- (3) siblings or half-siblings of the client, but not step-siblings, if the siblings are 18~~23~~ years of age or older and have no income; and
- (4) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.

~~(e)(f) If a client is 18 years of age or older and is temporarily living away from the permanent home while attending school and is being claimed as a dependent by the parents for tax purposes, the client's family shall be determined according to Paragraph (d) of this Rule.~~

~~(f)(g) In Paragraphs (d)(2) and (3) of this Rule, siblings who are temporarily living away from the household while attending school may be considered as living in the same household if they are being claimed as dependents by their parents for tax purposes and the parents are in the same household as the client.~~

~~(g)(f)~~ Net monthly family income shall be computed by subtracting the deductions allowed in Paragraph ~~(h)~~(g) of this Rule from the gross monthly family income as computed according to Paragraph ~~(h)~~(g) of this Rule.

~~(h)(g)~~ Gross Monthly Family Income.

TEMPORARY RULES

- (1) Gross monthly family income shall mean the combined cash income received by the client's family from the following sources:
 - (A) wages and salaries;
 - (B) earnings from self-employment;
 - (C) earnings from stocks, bonds, savings accounts, rentals, and all other investments;
 - (D) Social Security benefits and Supplemental Security Income benefits received by family members;
 - (E) public assistance benefits;
 - (F) retirement and pension payments;
 - (G) Veterans Administration benefits; and
 - (H) all other sources of cash income.
- (2) If the income received from any of the sources listed in Paragraph ~~(h)~~(g)(1) of this Rule is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.
- (3) Gross family income shall not include:
 - (A) income that children may earn from babysitting, lawn mowing, or other
 - (B) miscellaneous tasks;
 - (C) gifts;
 - (D) inheritances; ~~or~~
 - (E) life insurance ~~proceeds~~ proceeds; or
 - (F) Social Security benefits and Supplemental Security Income benefits of the client.

~~(i)~~(i) In addition to net monthly family income, other assets that are available to the client's family shall be considered in determining a client's financial need. Available assets shall mean cash or property which could be used to pay for the cost of rehabilitation services and shall include:

- (1) cash in checking or savings accounts which exceeds an amount three times the net monthly income allowed for the family size; and
- (2) real property considering the following provisions:
 - (A) Real property, other than the family homesite, shall be considered if the fair market value less encumbrances exceeds twenty-five thousand dollars (\$25,000).
 - (B) The equity shall be determined by subtracting the amount owed on mortgages or liens from the purchase price or the fair market value, whichever is less.
 - (C) The family homesite for the purposes of this Rule shall be defined as the family's principle place of residence and includes:
 - (i) the house and lot plus all buildings on the lot if the residence is in the city; or
 - (ii) the house and the land on which the house is located up to a maximum of one acre plus all buildings on the acre if the residence is in a rural area.
 - (D) Real property shall be regarded as an available asset to the extent that it can be converted to cash, either by sale or by use as collateral for a loan, in a timely manner to meet the cost of rehabilitation services.

~~(h)~~(h) Any of the following expenses, which are paid by a member of the client's family, shall be allowed as deductions in determining net monthly income:

- (1) state, federal, and Social Security taxes and any mandatory deductions for retirement contributions;
- (2) medical and dental payments not covered by a third-party payer;
- (3) health insurance premiums;
- (4) disability related expenses, not covered by a third-party payor, paid for the client or a member of the client's family except for expenses for those participants or clients who require personal assistance services in order to achieve independent living or an employment outcome and for whom the Division is contributing or is considering contributing to the cost of the personal assistance services;
- (5) child care payments ~~up to one hundred and seventy-five dollars (\$175) per child per month~~ for any child in the family unit who is 14 years of age or younger and the parents or other responsible adults are not able to care for the child;
- (6) post-secondary training expenses for family members not to exceed the rate specified in Rule ~~.0205 (b)(4) and (5)~~ .0119 (b)(1) to (5) of this Section; and
- (7) legally mandated payments such as alimony, child support or Social Security paybacks.

~~(j)~~(j) If the client's family has excess resources in either net monthly family income or available assets, the excess resources shall be applied to the cost of the client's rehabilitation. The Unit Manager or Facility Director shall approve the plan to apply excess resources to the cost of the client's rehabilitation. When the Division is contributing or is considering contributing to the cost of personal assistance services for an individual who has been determined financially eligible according to this Rule, the individual's financial contribution toward the cost of the personal assistance services shall be one-half the excess net monthly family income. The counselor shall determine the amounts to be paid and the method of payment. The Unit Manager or Facility Director shall approve the payment plan.

~~(k)~~(k) If there are extenuating circumstances, that prohibit the client's application of the excess resources toward the cost of rehabilitation, the Division may waive the application of part or all of the excess resources toward the rehabilitation. Such circumstances may include the inability to sell property, the fact that the amount of funds would be so small that it would provide little substantial help with the rehabilitation program, and the fact that the conversion of the excess resources may result in undue delay in proceeding with the rehabilitation program.

Written approval of the Unit Manager or Facility Director shall be required for the waiver. Documentation of the particular circumstances shall be provided by the client and shall be maintained in the client's record.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.47; Eff. February 1, 1976; Amended Eff. April 1, 1999; March 1, 1990; Temporary Amendment Eff. January 26, 2003; May 1, 2002.

SECTION .0600 - ORDER OF SELECTION FOR SERVICES

10 NCAC 20C .0603 PRIORITY CATEGORIES

(a) The Division shall determine each individual's priority category at the time the individual is determined eligible for services. The eligible individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

(b) The Division shall notify each eligible individual of his/her priority classification in writing at the same time the notification of eligibility is provided.

~~(c) The priority categories for order of selection for services for eligible individuals are as follows:~~
(c) The priority categories for order of selection for services for eligible individuals are as follows:

- (1) Category One: Individuals with a most significant (MSD) disability who are seriously limited in four functional capacity areas;
- (2) Category Two: Individuals with a most significant disability (MSD) who are seriously limited in three functional capacity areas;
- (3) Category Three: Individuals with a significant disability (SD) who are seriously limited in two functional capacity areas;
- (4) Category Four: Individuals with a significant disability (SD) who are seriously limited in one functional capacity area;
- (5) Category Five: Individuals with a non-significant and permanent disability that results in permanent functional limitations and who will require multiple vocational rehabilitation services to obtain a suitable employment outcome; and
- (6) Category Six: Any eligible individual who does not qualify for placement in a higher category.

(d) The Division shall change a client's priority classification immediately if there are changes in the client's significance of disability as evidenced by a review of medical information that warrants a change in their priority category classification. The Division shall notify the client in writing of any change in priority classification.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36; Eff. October 1, 1994; Amended Eff. July 1, 1998; April 1, 1997; Temporary Amendment Eff. January 26, 2003; May 1, 2002.

10 NCAC 20C .0604 PROCEDURES

(a) The Division Director upon determining that the Division does not have sufficient resources to provide services to all eligible individuals will implement an Order of Selection.

(b) The Division Director will set the date for statewide implementation of an Order of Selection and provide written notification to Division staff, all cooperative programs and vendors.

~~(a)(c) Eligible individuals who are already receiving services under an Individualized Written Rehabilitation Program (IWRP) Individualized Plan for Employment (IPE) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs will continue until their records of service are closed.~~

(d) When an Order of Selection is implemented, the Division will provide written notification to all eligible individuals assigned to a priority category who do not have a signed Individualized Plan for Employment (IPE).

~~(b) In establishing functional limitations as part of the priority category determination as set out in Rule .0603 of this Section, Division staff shall review all functional capacities that may pose problems in the rehabilitation program and employment outcomes with the eligible individual in order to identify functional limitations related to the person's disability(ies).~~

~~(b)(e) In determining an eligible individual's priority category for order of selection as set out in Rule .0603 of this Section, Division staff shall review existing data regarding the seriousness of limitations in functional capacity areas as related to the individual's disability(ies) and the problems those limitations pose in terms of an employment outcome.~~

~~(d)(f) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order down through Priority Category Four Priority Category Six according to the availability of resources. Within each category a individual's rank in that category is determined by their application date. The individual that applies first is served first.~~

~~(e)(g) Individuals in applicant status prior to implementation of the order of selection and whose priority category classification is below the categories accepted for services when the individuals are determined eligible shall be placed on a waiting list until their priority category is opened for services.~~

(h) Individuals determined eligible after the order of selection for services is implemented shall receive services if they are classified in the categories accepted for services or shall be placed on a waiting list if their classification places them in a category not currently being served.

~~(g)(i) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Written Rehabilitation Program—Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories approved for service accepted for service shall be placed on a waiting list. They shall remain on the waiting list until their priority category is opened for services.~~

~~(h)(j) When the order of selection is implemented, all individuals whose classification—priority category classification will mean they will be placed in a—places those individuals on a waiting list shall be notified in writing of their status. When services are made available to any category in which individuals are on a waiting list, the Division shall notify~~

individuals in that priority category that their rehabilitation program can be developed and implemented.

(k) When the Division Director has determined that the Division has sufficient resources to serve all eligible individuals, the Division will provide written notification to all eligible individuals, Division staff, all cooperative programs and vendors on the waiting list, that the implementation of an order of selection has ended.

(l) The Division will provide services to all priority categories when the implementation of an order of selection has ended.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36; Eff. October 1, 1994; Amended Eff. July 1, 1998; Temporary Amendment Eff. January 26, 2003; May 1, 2002.

10 NCAC 20C .0606 CASE FINDING AND INFORMATION AND REFERRAL PROGRAMS

(a) Case finding efforts shall not be modified because of an order of selection. The Division has a continuing responsibility to make the public and referral sources aware of the services it has to offer eligible individuals with disabilities, especially those with ~~severe~~-significant disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

~~(b) The Division also may elect to establish an expanded information and referral program while operating under an order of selection for services. An expanded information and referral program~~The Division will implement an information and referral program adequate to ensure that individuals with disabilities, including eligible individuals with disabilities who do not meet the Division's order of selection criteria for acceptance of services, are provided accurate vocational rehabilitation information and guidance which may include counseling, guidance, and referral for job placement using appropriate mode of communication to assist them in preparing for, securing, retaining, or regaining employment for those eligible individuals who are not in the priority categories to receive services under the State's order of selection, but the program shall meet the requirements of 34 C.F.R. 361.37(c).

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.37; Eff. October 1, 1994; Amended Eff. July 1, 1998; Temporary Amendment Eff. January 26, 2003; May 1, 2002.

Editor's Note: This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.

Rule-making Agency: Social Services Commission

Rule Citation: 10 NCAC 30 .0212, .0220-.0222

Effective Date for Temporary Rule: February 1, 2003

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 143B-153; P.L. 107-171

Reason for Proposed Action for Temporary Rule:

10 NCAC 30 .0212 – The simplification of the eligibility determination process for the Food Stamp Program by mandating the use of the standard, basic or telephone utility allowance is a benefit for Food Stamp Households. This change will eliminate the requirement for households to provide verification of 12 months of utility expenses in order to claim actual utility costs as a deduction. Utilizing the temporary rulemaking process will enable the Division of Social Services to make this provision available to applicable households immediately.

10 NCAC 30 .0220 – The temporary adoption of this Rule will benefit food stamp households by providing eligible households five months of continued food stamp benefits when they leave Work First cash assistance. Families that leave TANF and begin working often need continued benefits to assist in their transition because of additional financial needs during the early months of employment, i.e. uniforms, tools, transportation costs, etc. Transitional benefits will allow families time to adjust to the loss of cash assistance while continuing the much-needed assurance of food security.

10 NCAC 30 .0221 – The temporary adoption of this Rule will benefit food stamp households by easing the burden of the stringent food stamp reporting requirements currently in place. Expediting this process will encourage and promote participation in the Food Stamp Program for families who have been overwhelmed by the current reporting requirements. Utilizing the temporary rulemaking process will enable the Division of Social Services to make this provision available to applicable households immediately.

10 NCAC 20 .0222 – The temporary adoption of this Rule will benefit food stamp households by reducing the rigid reporting requirements that food stamp households currently face. This will ease the burden faced by such requirements as well as simplify program administration. Utilizing temporary rulemaking process will enable the Division of Social Services to make this provision available to applicable households immediately.

Public Hearing:

Date: June 4, 2003

Time: 10:00 a.m.

Location: 325 North Salisbury St., Albemarle Building, Room 832, Raleigh, NC

Proposed Effective Date for Permanent Rule: July 1, 2004

Reason for Proposed Action: The adoption and amendment of these Rules will allow the State to implement various provisions of the "2002 Farm Bill Act". The proposed changes to the APA rules will allow more families to be eligible for Food Stamp benefits or increase benefits for current Food Stamp households because of the simplified utility allowances, transitional benefits, income and resource exclusions and streamlined reporting requirements. The enactment of the "2002 Farm Bill" was

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designed to streamline the eligibility and reporting process and to ensure food security for eligible families.

Comment Procedures: Should you desire to comment on the proposed rules please contact Ms. Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, fax (919) 733-9386. Verbal comments may be expressed at the Commission meeting. Any written comments must be received by 10:00 a.m. on June 4, 2003.

Fiscal Impact

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

CHAPTER 30 - FOOD ASSISTANCE

SECTION .0200 - MANUAL

10 NCAC 30 .0212 SIMPLIFIED UTILITY ALLOWANCES

(a) The state agency shall develop a method subject to the United States Department of Agriculture, Food and Nutrition Service, approval for establishing standard-simplified utility allowance-allowances for use in calculating shelter costs of those households which incur certain utility costs separate and apart from their rent or mortgage payments. The standard-simplified utility allowances will be developed in conjunction with data gathered through quality control sampling and surveys of utility company rates. Households which do not incur any separate utility charges for a heating or cooling component shall not be entitled to claim the standard utility allowance. The standard utility allowance will be a single standard which includes the cost of heating and cooling (air conditioning), cooking fuel, electricity, the basic service fee for one telephone, water, sewerage, and garbage collection fees. If a household is not entitled to the standard utility allowance, it may claim actual utility expenses for any utility which it pays separate and apart from the rent or mortgage payment.

(b) Types of utility allowances:

- (1) Standard utility allowance includes the cost of heating and cooling (air conditioning), cooking fuel, electricity, and the basic service fee for one telephone, water, sewerage, and garbage collection fees.
(2) Basic utility allowance includes at least two non-heating or non-cooling utility expenses, such as cooking fuel, electricity, and the basic service for one telephone, water, sewerage, and garbage collection fees.
(3) Telephone utility allowance includes the basic telephone services, fees and taxes accessed by the provider.

(b)(c) The household's choice of standard allowance or actual expenses is Simplified utility allowances are binding upon the household for a period of 12 months following certification (initial or recertification). If the household moves before the expiration of the 12 month period and becomes ineligible for the

standard-designated allowance, the agency shall make the appropriate change.

(e)(d) The state agency shall review the standard-simplified utility allowance-allowances at least annually and adjust the allowance as necessary to reflect changes in the cost of the utilities. The annual update will be effected on October 1 of each calendar year to coincide with annual, federal adjustments of the combined dependent care and shelter deduction. The annual update will be based on information published by the North Carolina Department of Administration, Division of State Budget and Management Office of State Energy. The amount of the standard-allowance-utility allowances will not vary seasonally but variations shown in this Rule will be reflected.

- (1) The state agency will vary its standard and basic utility standard-allowances by household size, e.g., a different standard amount for each household size or range of household sizes.
(2) The basic utility allowance standard may not be used by a household living in a public housing unit which charges the household only for excess utility costs. These households may use the actual amount of the excess charge only.
(3) The standard utility allowance standard may be used when a household is billed for a heating or cooling component not totally paid by a vendor payment.
(4) Multiple households living in the same residence and sharing utility costs are allowed the standard or basic utility allowance only one standard for the applicable size of each household the entire residence. The one standard allowance shall be divided equitably among the households which contribute to meeting utility costs, whether or not each household participates in the program.

History Note: Authority G.S. 108A-51; 143B-153; 7 C.F.R. 273.9(d)(6); 7 U.S.C. 2011-2027; P.L. 107-171; Eff. April 1, 1982; Amended Eff. March 1, 1990; July 1, 1984; Temporary Amendment Eff. February 1, 2003.

10 NCAC 30 .0220 TRANSITIONAL FOOD STAMP BENEFITS

Households will receive transitional food stamp benefits for a period of five months when they lose their Work First Family Assistance benefits. Benefits will be equal to the amount received by the household prior to the termination of Work First Family Assistance benefits with adjustments in income for the loss of Work First Family Assistance. Other sources of income will not be re-calculated. A household is not eligible for transitional food stamp benefits if it loses Work First Family Assistance cash assistance for any of the following reasons:

- (1) Work First Family Assistance case closes due to a sanction;
(2) Household member is disqualified from the Food Stamp Program;
(3) Household moves out of North Carolina;
(4) Household moves to another county in North Carolina; or

- (5) Household receives more than one Work First Family Assistance payment and a Work First Family Assistance payment is still being received.

A household may apply for recertification during the transitional period with benefits determined according to current circumstances.

History Note: Authority G.S. 108-A-51: 143B-153; P.L. 107-171; Temporary Adoption Eff. February 1, 2003.

10 NCAC 30 .0221 SEMI-ANNUAL REPORTING

(a) The county department will require households with earned and/or unearned income that are assigned six-month certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size. The agency will assign a certification period of six months to all households subject to semi-annual reporting requirements. The following households are excluded from semi-annual reporting requirements:

- (1) Households that contain a homeless individual;
- (2) Households that contain a migrant;
- (3) Households that contain an Able-Bodied Adult Without a Dependent, as defined in 7 CFR 273.24;
- (4) Households whose only member(s) is/are Supplemental Security Income (SSI) applicants or recipients who do not receive any other types of fluctuating income;
- (5) Households whose only income is stable Social Security Income and/or SSI;
- (6) Households with no income;
- (7) Households receiving transitional Food Stamp benefits; or
- (8) Any other household not subject to semi-annual reporting requirements as determined by the United States Department of Agriculture, Food and Nutrition Services.

(b) Households with income and not excluded in Paragraph (a) of this Rule must not be required to report changes in household circumstances during the certification period for the following:

- (1) Changes in sources or amounts of gross monthly income unless the change results in the gross monthly income exceeding 130 percent of the monthly poverty income guideline for the household size;
- (2) Changes in household composition;
- (3) Changes in residence and the resulting change in shelter costs;
- (4) The acquisition of a licensed vehicle;

- (5) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of two thousand dollars (\$2,000); and

- (6) Changes in the legal obligation to pay child support.

(c) The county agency must act on any change reported by such households that would increase benefits. The county agency must not act on changes that would result in a decrease in benefits unless:

- (1) The household has voluntarily requested that its case be closed; or
- (2) The agency has information about the household's circumstances considered verified upon receipt.

(d) A copy of the CFR may be obtained by contacting the State Division of Social Services, Economic Independence Section, 2420 Mail Service Center, Raleigh, NC 27699-2420.

History Note: Authority G.S. 108-A-51: 143B-153; P.L. 107-171; Temporary Adoption Eff. February 1, 2003.

10 NCAC 30 .0222 DEDUCTIONS

The county department will disregard reported changes in deductions during certification periods except for changes associated with a new residence or earned income until the next recertification for the following food stamp households:

- (1) Households that contain a homeless individual;
- (2) Households that contain a migrant;
- (3) Households that contain an Able-Bodied Adult Without a Dependent, as defined in 7 CFR 273.24;
- (4) Households whose only member(s) is/are Supplemental Security Income (SSI) applicants or recipients who do not receive any other types of fluctuating income;
- (5) Households whose only income is stable Social Security Income and/or SSI;
- (6) Households with no income; or
- (7) Any other household not subject to semi-annual reporting requirements as determined by the United States Department of Agriculture, Food and Nutrition Services.

A copy of the CFR may be obtained by contacting the State Division of Social Services, Economic Independence Section, 2420 Mail Service Center, Raleigh, NC 27699-2420.

History Note: Authority G.S. 108-A-51: 143B-153; P.L. 107-171; Temporary Adoption Eff. February 1, 2003.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting December 21, 2002, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2002 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
1	NCAC	05B	.1522*	16:16 NCR
1	NCAC	05B	.1523*	17:03 NCR
2	NCAC	09B	.0116*	17:08 NCR
2	NCAC	48A	.1702-.1703	16:12 NCR
2	NCAC	52A	.0108-.0109	17:08 NCR
2	NCAC	57	.0101	17:08 NCR
2	NCAC	57	.0102-.0103*	17:08 NCR
2	NCAC	57	.0201-.0210*	17:08 NCR
2	NCAC	57	.0301-.0303	17:08 NCR
2	NCAC	57	.0304-.0309*	17:08 NCR
4	NCAC	03I	.0101	17:08 NCR
4	NCAC	03I	.0201	17:08 NCR
4	NCAC	03I	.0204-.0206	17:08 NCR
4	NCAC	03I	.0301-.0306	17:08 NCR
4	NCAC	03I	.0401-.0406	17:08 NCR
4	NCAC	03I	.0501-.0503	17:08 NCR
4	NCAC	03I	.0601-.0605	17:08 NCR
4	NCAC	03I	.0701-.0706	17:08 NCR
4	NCAC	03M	.0101-.0102*	17:08 NCR
4	NCAC	03M	.0201-.0202*	17:08 NCR
4	NCAC	03M	.0203	17:08 NCR
4	NCAC	03M	.0204*	17:08 NCR
4	NCAC	03M	.0301-.0303*	17:08 NCR
4	NCAC	03M	.0401-.0403*	17:08 NCR
4	NCAC	03M	.0501-.0502*	17:08 NCR
10	NCAC	03Q	.1408*	17:05 NCR
10	NCAC	03R	.1125*	17:04 NCR
10	NCAC	03R	.2714*	17:04 NCR
10	NCAC	03R	.3704*	17:04 NCR
10	NCAC	03R	.6385*	17:04 NCR
10	NCAC	14G	.0102*	17:02 NCR
10	NCAC	14V	.0104*	17:02 NCR
10	NCAC	14V	.0202-.0204*	17:02 NCR
10	NCAC	14V	.5601-.5604*	16:12 NCR
10	NCAC	22G	.0408	17:07 NCR
10	NCAC	22G	.0505*	17:07 NCR
10	NCAC	22G	.0506-.0507	17:07 NCR
10	NCAC	22G	.0509	17:07 NCR
10	NCAC	22G	.0510*	17:07 NCR
10	NCAC	22G	.0512-.0515*	17:07 NCR
10	NCAC	26D	.0116*	17:03 NCR
10	NCAC	26H	.0102*	17:03 NCR
10	NCAC	26H	.0401*	17:03 NCR
10	NCAC	26H	.0502*	17:03 NCR

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10	NCAC	26H	.0602*	17:03 NCR
11	NCAC	06A	.0213-.0216	17:07 NCR
11	NCAC	06A	.0221-.0233	17:07 NCR
11	NCAC	06A	.0235-.0236	17:07 NCR
11	NCAC	06A	.0239-.0240	17:07 NCR
11	NCAC	06A	.0301	17:07 NCR
11	NCAC	06A	.0302*	17:07 NCR
11	NCAC	06A	.0304	17:07 NCR
11	NCAC	06A	.0306	17:07 NCR
11	NCAC	06A	.0401	17:07 NCR
11	NCAC	06A	.0402*	17:07 NCR
11	NCAC	06A	.0403	17:07 NCR
11	NCAC	06A	.0410	17:07 NCR
11	NCAC	06A	.0412	17:07 NCR
11	NCAC	06A	.0413*	17:07 NCR
11	NCAC	06A	.0414	17:07 NCR
11	NCAC	06A	.0417	17:07 NCR
11	NCAC	06A	.0502-.0503	17:07 NCR
11	NCAC	06A	.0506-.0508	17:07 NCR
11	NCAC	06A	.0601	17:07 NCR
11	NCAC	06A	.0602*	17:07 NCR
11	NCAC	06A	.0702*	17:07 NCR
11	NCAC	06A	.0805	17:07 NCR
11	NCAC	12	.0328*	17:08 NCR
11	NCAC	12	.0601*	17:08 NCR
11	NCAC	12	.0602	17:08 NCR
11	NCAC	12	.0603-.0609*	17:08 NCR
11	NCAC	12	.0611	17:08 NCR
11	NCAC	12	.0612*	17:08 NCR
13	NCAC	07F	.0101	17:08 NCR
13	NCAC	07F	.0201	17:08 NCR
13	NCAC	07F	.0301	17:08 NCR
13	NCAC	07F	.0501-.0502*	17:08 NCR
13	NCAC	15	.0430-.0431*	17:08 NCR
13	NCAC	15	.0432	17:08 NCR
13	NCAC	15	.0433-.0438*	17:08 NCR
15A	NCAC	01C	.0106*	17:04 NCR
15A	NCAC	01C	.0306*	17:04 NCR
15A	NCAC	01C	.0406*	17:04 NCR
15A	NCAC	02B	.0234*	17:03 NCR
15A	NCAC	02D	.0912*	17:03 NCR
15A	NCAC	02D	.0952*	17:03 NCR
15A	NCAC	02D	.0959-.0960*	17:03 NCR
15A	NCAC	09C	.1219*	16:24 NCR
15A	NCAC	09C	.1227*	16:24 NCR
15A	NCAC	10B	.0403*	15:02 NCR
15A	NCAC	10K	.0101*	17:06 NCR
15A	NCAC	12K	.0102	17:06 NCR
15A	NCAC	12K	.0106-.0108*	17:06 NCR
15A	NCAC	18A	.2117	not required G.S. 150B-21.5(6)
15A	NCAC	19A	.0103*	16:22 NCR
15A	NCAC	19A	.0203*	16:11 & 16:22 NCR
15A	NCAC	21A	.0819-.0820*	16:23 NCR
15A	NCAC	21A	.0822*	16:23 NCR
15A	NCAC	21F	.1204*	17:05 NCR
15A	NCAC	21H	.0111*	16:23 NCR
17	NCAC	04C	.0701	not required G.S. 150B-1(d)(4)
17	NCAC	05C	.0703	not required G.S. 150B-1(d)(4)
17	NCAC	06B	.3503	not required G.S. 150B-1(d)(4)
17	NCAC	06B	.3527	not required G.S. 150B-1(d)(4)
17	NCAC	07B	.4002-.4004	not required G.S. 150B-1(d)(4)

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17	NCAC	07B	.4007	not required G.S. 150B-1(d)(4)
17	NCAC	12A	.0502	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0412	not required G.S. 150B-1(d)(4)
18	NCAC	06	.1308*	17:05 NCR
18	NCAC	06	.1715*	16:22 NCR
21	NCAC	08F	.0103*	17:06 NCR
21	NCAC	08F	.0105*	17:06 NCR
21	NCAC	08M	.0105*	17:06 NCR
21	NCAC	08M	.0107*	17:06 NCR
21	NCAC	08N	.0402*	17:06 NCR
21	NCAC	16R	.0106*	17:06 NCR
21	NCAC	18B	.0701-.0704	17:08 NCR
21	NCAC	18B	.0706	17:08 NCR
21	NCAC	18B	.0902*	17:08 NCR
21	NCAC	18B	.0907-.0908*	17:08 NCR
21	NCAC	21	.0107*	16:24 NCR
21	NCAC	21	.0514-.0515*	16:24 NCR
21	NCAC	21	.0604*	16:24 NCR
21	NCAC	21	.0607*	16:24 NCR
21	NCAC	21	.0803*	16:24 NCR
21	NCAC	21	.0903*	16:24 NCR
21	NCAC	46	.1414*	17:06 NCR
21	NCAC	46	.1505*	17:06 NCR
21	NCAC	46	.1801*	17:06 NCR
21	NCAC	50	.0106	not required G.S. 150B-21.5(a)(4)
21	NCAC	50	.0202	not required G.S. 150B-21.5(a)(4)
21	NCAC	50	.0301*	17:06 NCR
21	NCAC	50	.0306*	17:06 NCR
21	NCAC	50	.0505-.0506*	17:06 NCR
21	NCAC	50	.1101*	17:06 NCR
21	NCAC	50	.1401-.1405*	17:06 NCR
21	NCAC	50	.1407	not required G.S. 150B-21.5(a)(2)
21	NCAC	50	.1408-.1409	17:06 NCR
21	NCAC	54	.2803-.2805*	16:23 NCR
21	NCAC	57B	.0102-.0103*	17:06 NCR
21	NCAC	68	.0216*	17:05 NCR
21	NCAC	68	.0306*	17:06 NCR
28	NCAC	02A	.0201*	17:03 NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

01 NCAC 05B .1522 RECIPROCAL PREFERENCE

(a) Each solicitation document used to obtain contracts for equipment, materials, supplies, and services that exceed twenty-five thousand dollars (\$25,000) in value shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the agency that issued the solicitation document from investigating this information and concluding that the principal place of business is different, according to their interpretation of G.S. 143-59(c).

(b) A reciprocal preference shall not be used when procurements are being made under G.S. 143-53(a)(5) and G.S. 143-57.

(c) For the purpose of this Section, a bidder and offeror, as well as bid and proposal, are interchangeable.

*History Note: Authority G.S. 143-59;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003.*

01 NCAC 05B .1523 PROCUREMENT CARDS

(a) Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract. As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.

(b) Procurement card transactions processed through the State's electronic procurement system, utilizing the card as a payment mechanism within electronic workflow and approval processes, may be in any amount consistent with agency fiscal policies.

(c) For procurement card transactions processed outside the State's electronic procurement system, the per-transaction limit shall be two thousand five hundred dollars (\$2,500.00). This limit may be changed only under the following circumstances:

- (1) In an emergency (as defined by 01 NCAC 05B .1602 or Governor's declaration), the agency

card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the Division of Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.

- (2) Agencies may apply to the SPO for higher limits on specific types of transactions, with justification required.
- (3) The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis, after taking into consideration current market trends, the economy, and recommendations received from the State Controller and the State Auditor.

(d) Each participating agency shall designate a procurement card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).

- (1) All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
- (2) Cards shall show the agency name, cardholder, the state seal or agency logo, and indicate they are for official use only.

(e) The card program administrator, in consultation with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limits set in Paragraphs (b) or (c) of this Rule) total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies or procedures are updated.

(f) The card program administrator shall determine compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.

(g) Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for state departments) governing those agencies under their responsibility.

(h) No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.

*History Note: Authority G.S. 143-49(8);
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.*

02 NCAC 09B .0116 ADOPTIONS BY REFERENCE

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of three hundred fifty-nine dollars (\$359.00).

(b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXI-NFXVI" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of four hundred fifty dollars (\$450.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, "ASTM Standards on Engine Coolants," published by the American Society for Testing Materials. Copies of this document may be obtained from the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103, at a cost of seventy-two dollars (\$72.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of one hundred forty-nine dollars (\$149.00).

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health, Education and Welfare, Food and Drug Administration. Copies of this document may be obtained from the National Technical Information Service, Attention: Orders Department, 5285 Port Royal Road, Springfield, VA 22161, at a cost of sixty-one dollars (\$61.00) for Volume I and two hundred twenty-four dollars (\$224.00) for Volume II.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health, Education and Welfare, Food and Drug Administration. Copies of this document may be obtained from the National Technical Information Service, Attention: Orders Department, 5285 Port Royal Road, Springfield, VA 22161, at a cost of one hundred seventy-five dollars (\$175.00).

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," R. E. Buchanan and N. E. Gibbons, Editors, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Williams & Wilkins Company, Attention: Book Order Department, 428 East Preston Street, Baltimore, MD 21202, at a cost of sixty-five dollars (\$65.00).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of

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Agriculture, Animal and Plant Health Inspection Service, Meat and Poultry Inspection Program, Washington, D.C. Copies of this document may be obtained from the USDA -Food Safety and Inspection Service, ALA Room 80, South Building, 14th and Independence Avenues, Southwest, Washington, DC 20250, at no charge.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical Manual," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of one hundred twenty-three dollars (\$123.00).

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," E. H. Marth, Editor, published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of fifty-five dollars (\$55.00).

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," M. L. Speck, Editor, published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of ninety dollars (\$90.00).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Vol. I, Kreg and Holt, Editors, William E. Wilkins Company, Baltimore. Copies of this document may be obtained from the Williams & Wilkins Company, Attention: Book Order Department, 428 East Preston Street, Baltimore, MD 21202, at a cost of one hundred fifteen dollars (\$115.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," E. H. Lennette, Balows, et al., Editors, published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology, P.O. Box 605, Herndon, VA 22070, at a cost of ninety-eight dollars (\$98.00).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of one hundred sixty dollars (\$160.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter A (General), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

Part	Subject of Part
(1)	1.1 General
(2)	1.3 Labeling - Definitions
(3)	1.20 Presence of Mandatory Label Information

(4)	1.21 Failure to Reveal Material Facts
(5)	1.24 Exemptions from Required Label Statements
(6)	1.31 Package Size Savings
(7)	1.35 "Cents-off," or Other Savings Representations
(8)	2.25 Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(9)	2.35 Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(10)	7.12 Guaranty
(11)	7.13 Suggested Forms of Guaranty
(12)	70 Color Additives
(13)	70.3 Definitions
(14)	70.5 General Restrictions on Use
(15)	70.10 Color Additives in Standardized Foods, New Drugs, and Antibiotics
(16)	70.11 Related Substances
(17)	70.20 Packaging Requirements for Straight Colors (Other Than Hair Dyes)
(18)	70.25 Labeling Requirements for Color Additives (Other Than Hair Dyes)
(19)	73 Listing of Color Additives Exempt from Certification
(20)	74 Listing of Color Additives Subject to Certification
(21)	81 General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics
(22)	82 Listing of Certified Provisionally Listed Colors and Specifications

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixteen dollars (\$16.00).

(p) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter B (Food for Human Consumption), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug and Cosmetic Act:

Part	Subject of Part
(1)	100 General
(2)	101 Food Labeling (Except 101.11 and 101.103)
(3)	102 Common or Usual Name for Nonstandardized Foods
(4)	103 Quality Standards for Foods with No Identity Standards
(5)	104 Nutritional Quality Guidelines for Foods
(6)	105 Foods for Special Dietary Use
(7)	106 Infant Formula Quality Control Procedures
(8)	107 Infant Formula
(9)	108 Emergency Permit Control
(10)	109 Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material

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(11)	110	Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food	(51)	184	Direct Food Substances Affirmed as Generally Recognized as Safe
(12)	113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers	(52)	186	Indirect Food Substances Affirmed as Generally Recognized as Safe
(13)	114	Acidified Foods	(53)	189	Substances Prohibited from Use in Human Food
(14)	120	Hazard Analysis and Critical Control Point (HACCP) Systems	(54)	193	Tolerances for Pesticides in Food Administered by the Environmental Protection Agency
(15)	123	Frozen Raw Breaded Shrimp	Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of forty-two dollars (\$42.00).		
(16)	129	Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C .0700 - Bottled Water)	(q) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter C (Drugs: General) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:		
(17)	130	Food Standards: General		Part	Subject of Part
(18)	131	Milk and Cream	(1)	200	General
(19)	133	Cheeses and Related Cheese Products	(2)	201	Labeling
(20)	135	Frozen Desserts	(3)	202	Prescription Drug Advertising
(21)	136	Bakery Products	(4)	210	Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General
(22)	137	Cereal Flours and Related Products	(5)	211	Current Good Manufacturing Practice for Finished Pharmaceuticals
(23)	139	Macaroni and Noodle Products	(6)	225	Current Good Manufacturing Practice for Medicated Feeds
(24)	145	Canned Fruits	(7)	226	Current Good Manufacturing Practice for Medicated Premixes
(25)	146	Canned Fruit Juices	(8)	250	Special Requirements for Specific Human Drugs
(26)	150	Fruit Butters, Jellies, Preserves, and Related Products	(9)	290	Controlled Drugs
(27)	152	Fruit Pies	(10)	299	Drugs; Official Names and Established Names
(28)	155	Canned Vegetables	Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of seven dollars (\$7.00).		
(29)	156	Vegetable Juices	(r) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter D (Drugs for Human Use) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:		
(30)	158	Frozen Vegetables		Part	Subject of Part
(31)	160	Eggs and Egg Products	(1)	300	General
(32)	161	Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)	(2)	310	New Drugs
(33)	163	Cacao Products	(3)	312	New Drugs for Investigational Use
(34)	164	Tree Nut and Peanut Products	(4)	314	New Drug Applications
(35)	165	Nonalcoholic Beverages	(5)	320	Bioavailability and Bioequivalence Requirements
(36)	166	Margarine	(6)	329	Habit-Forming Drugs
(37)	168	Sweeteners and Table Syrups	(7)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(38)	169	Food Dressings and Flavorings	(8)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(39)	170	Food Additives			
(40)	172	Food Additives Permitted for Direct Addition to Food for Human Consumption			
(41)	173	Secondary Direct Food Additives Permitted in Food for Human Consumption			
(42)	174	Indirect Food Additives: General			
(43)	175	Indirect Food Additives: Adhesive Coatings and Components			
(44)	176	Indirect Food Additives: Paper and Paperboard Components			
(45)	177	Indirect Food Additives: Polymers			
(46)	178	Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers			
(47)	179	Irradiation in the Production, Processing and Handling of Food			
(48)	180	Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study			
(49)	181	Prior-Sanctioned Food Ingredients			
(50)	182	Substances Generally Recognized as Safe			

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- (9) 332 Antiflatulent Products for Over-the-Counter Human Use
- (10) 361 Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
- (11) 369 Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
- (12) 429 Drugs Composed Wholly or Partly of Insulin
- (13) 430 Antibiotic Drugs: General
- (14) 431 Certification of Antibiotic Drugs
- (15) 432 Packaging and Labeling of Antibiotic Drugs
- (16) 433 Exemptions from Antibiotic Certification and Labeling Requirements
- (17) 436 Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs
- (18) 440 Penicillin Antibiotic Drugs
- (19) 442 Cepha Antibiotics
- (20) 444 Oligosaccharide Antibiotic Drugs
- (21) 446 Tetracycline Antibiotic Drugs
- (22) 448 Peptide Antibiotics
- (23) 449 Antifungal Antibiotics
- (24) 450 Antitumor Antibiotic Drugs
- (25) 452 Macrolide Antibiotic Drugs
- (26) 453 Lincomycin Antibiotic Drugs
- (27) 455 Certain Other Antibiotic Drugs
- (28) 460 Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of thirty-six dollars (\$36.00).

(s) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter H (Medical Devices) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

- | Part | Subject of Part |
|------|---|
| (1) | 809 In Vitro Diagnostic Products for Human Use |
| (2) | 812 Investigational Device Exemptions |
| (3) | 813 Investigational Exemptions for Intraocular Lenses |
| (4) | 820 Good Manufacturing Practices for Medical Devices: General |
| (5) | 860 Medical Device Classification Procedures |
| (6) | 861 Procedures for Performance Standards Development |
| (7) | 870 Cardiovascular Devices |
| (8) | 882 Neurological Devices |
| (9) | 884 Obstetrical and Gynecological Devices |
| (10) | 895 Banned Devices |

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-two dollars (\$22.00).

(t) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter E (Animal Drugs, Feeds, and Related Products) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

- | Part | Subject of Part |
|------|---|
| (1) | 500 General |
| (2) | 501 Animal Food Labeling |
| (3) | 502 Common or Usual Names for Nonstandardized Animal Foods |
| (4) | 505 Interpretive Statements Re: Warnings on Animal Drugs for Over-the-Counter Sale |
| (5) | 507 Thermally Processed Low-Acid Animal Foods Packaged in Hermetically Sealed Containers |
| (6) | 508 Emergency Permit Control |
| (7) | 509 Unavoidable Contaminants in Animal Food and Food-Packaging Material |
| (8) | 510 New Animal Drugs |
| (9) | 511 New Animal Drugs for Investigational Use |
| (10) | 514 New Animal Drug Applications |
| (11) | 520 Oral Dosage Form New Animal Drugs Not Subject to Certification |
| (12) | 522 Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification |
| (13) | 524 Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification |
| (14) | 526 Intramammary Dosage Forms Not Subject to Certification |
| (15) | 529 Certain Other Dosage Form New Animal Drugs Not Subject to Certification |
| (16) | 536 Tests for Specific Antibiotic Dosage Forms |
| (17) | 539 Bulk Antibiotic Drugs Subject to Certification |
| (18) | 540 Penicillin Antibiotic Drugs for Animal Use |
| (19) | 544 Oligosaccharide Certifiable Antibiotic Drugs for Animal Use |
| (20) | 546 Tetracycline Antibiotic Drugs for Animal Use |
| (21) | 548 Certifiable Peptide Antibiotic Drugs for Animal Use |
| (22) | 555 Chloramphenicol Drugs for Animal Use |
| (23) | 556 Tolerances for Residues of New Animal Drugs in Food |
| (24) | 558 New Animal Drugs for Use in Animal Feeds |
| (25) | 561 Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency |
| (26) | 564 Definitions and Standards for Animal Food |
| (27) | 570 Food Additives |

- (28) 573 Food Additives Permitted in Feed and Drinking Water of Animals
- (29) 582 Substances Generally Recognized as Safe

Eff. December 14, 1981; Amended Eff. April 1, 2003; June 1, 1995; April 1, 1992; June 1, 1988; October 1, 1987.

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixteen dollars (\$16.00).

(u) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter G (Cosmetics) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

- | Part | Subject of Part |
|---------|--|
| (1) 700 | General |
| (2) 701 | Cosmetic Labeling |
| (3) 720 | Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements |
| (4) 730 | Voluntary Filing of Cosmetic Product Experiences |
| (5) 740 | Cosmetic Product Warning Statements |

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of eight dollars and fifty cents (\$8.50).

(v) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-four dollars (\$24.00).

(w) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-three dollars (\$23.00).

(x) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Poultry and Poultry Products," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-three dollars (\$23.00).

(y) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 317.2(1) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.

(z) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 381.125(b) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.

History Note: Authority G.S. 106-139;

02 NCAC 57 .0102 AUTHORIZATION

(a) The Tobacco Trust Fund Commission is authorized by G.S. 143, Article 75 to develop Compensatory Programs and Qualified Agricultural Programs to provide financial assistance from the Tobacco Trust Fund to eligible recipients.

(b) As part of its authority to develop guidelines and criteria for eligibility for disbursement of funds, to determine forms of direct and indirect economic assistance to be awarded, and to develop procedures for applying for and reviewing applications for assistance from the Fund, the Commission may periodically set a list of funding priorities which it will follow in awarding grants for qualified agricultural programs and in granting compensatory programs. The Commission may also request specific programs intended to alleviate or avoid unemployment and fiscal distress in the tobacco-related segment of the State's economy, stabilize local tobacco-dependent economies, stabilize and maintain local tax bases, and optimally use natural resources. The Commission may work cooperatively with other government agencies and agricultural and rural entities to develop Compensatory Programs and Qualified Agricultural Programs. Actions of the Commission will be based on rules established by the Commission.

History Note: Authority G.S. 143-715; 143-718; Temporary Adoption Eff. May 15, 2002; Temporary Adoption Eff. June 29, 2002; Eff. April 15, 2003.

02 NCAC 57 .0103 DEFINITIONS

In addition to the definitions contained in G.S. 143-716 the following definitions apply:

- (1) Lost Quota. The difference in total aggregate annual tobacco quota poundage between the year in question and 1997;
- (2) Person. An individual human being;
- (3) Tobacco allotment. An amount of tobacco allowed to be grown on a tract of land;
- (4) Tobacco allotment holder. A person who, at the time of the grant application, owns a certain amount of tobacco quota on a tract of land, as determined by the U.S. Farm Service Agency records for the county in which the quota is located;
- (5) Tobacco grower. Tobacco producer;
- (6) Tobacco producer. A person or entity actively engaged in planting, growing, harvesting and marketing tobacco, or who shares in the expense of producing the crop, and for that reason is entitled to share in the revenues derived from marketing the crop;
- (7) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption; and
- (8) Tobacco-related segment of the State's agricultural economy. That part of the State's

agricultural economy that includes tobacco producers, tobacco allotment holders, persons who work on tobacco farms and tobacco auction-related workers or warehousemen and others in tobacco-dependent communities as determined by the Commission in a grant or contract approval.

History Note: Authority G.S. 143-716; 143-718; Temporary Adoption Eff. May 15, 2002; Temporary Adoption Eff. June 29, 2002; Eff. April 15, 2003.

02 NCAC 57 .0201 PURPOSE

The purpose of the Commission's Compensatory Program is to directly or indirectly compensate or indemnify tobacco producers, tobacco allotment holders, individuals displaced from tobacco-related employment and persons engaged in tobacco-related business for economic losses resulting from lost quota and declining market conditions caused by the Master Settlement Agreement as determined by the Commission according to these Rules.

History Note: Authority G.S. 143-718; 143-720; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0202 TYPES OF PROGRAMS

Grants from Compensatory Programs shall compensate or indemnify grant beneficiaries for losses occurring in 1998 and after. Grants for financial assistance shall be for no more than one year at a time.

History Note: Authority G.S. 143-718; 143-720; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0203 ELIGIBILITY TO RECEIVE GRANTS

Persons receiving, or organizations administering, Compensatory Program grants shall be, or shall benefit, one or more of the following:

- (1) Tobacco producers, allotment holders or persons engaged in tobacco-related businesses who can quantify adverse economic effects in North Carolina to themselves individually from the Master Settlement Agreement after payment of any funds from the National Tobacco Grower Settlement Trust;
- (2) Tobacco producers, allotment holders or persons engaged in tobacco-related businesses who can quantify economic loss to themselves individually resulting from lost tobacco quota due to the Master Settlement Agreement;
- (3) Tobacco producers who can quantify a decline in the value of tobacco-related personal property assets due to the Master Settlement Agreement;
- (4) Tobacco product component businesses which are adversely affected by the Master Settlement Agreement and which need

financial assistance to:

- (a) Retool machinery or equipment; or
 - (b) Retrain workers in order to convert to the production of new products or non-tobacco use of existing products; or
 - (c) Effect other similar changes;
- (5) Persons engaged in tobacco-related businesses who can quantify individual financial losses due to the Master Settlement Agreement; or
- (6) Individuals displaced from tobacco-related employment who can show that the Master Settlement Agreement caused their displacement and who can further show that the displacement has resulted in actual economic loss to them.

History Note: Authority G.S. 143-718; 143-720; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0204 APPLICATIONS FOR GRANTS

(a) Grant proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. Applicants may also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed 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 Tobacco Trust Fund Grant Application Form which shall contain the following information:

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) If the applicant is an organization, consortium, cooperative or other entity representing multiple eligible beneficiaries, a description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and members of the Board of Directors. If the applicant involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the Compensatory Program;
- (3) A description of the Compensatory Program, its goals and objectives, and the manner in which it will accomplish its goals and objectives, including how the applicant will quantify actual losses due to the Master Settlement Agreement that are not compensated by payments from the National Tobacco Grower Settlement Trust;
- (4) A detailed statement of the projected cost of the Compensatory Program, including any administrative costs and including expected

- (5) funding from any other source;
- (6) A description of how the project will be completed including time lines;
- (7) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State Auditor;
- (8) An explanation of how the project's results will be evaluated;
- (9) At least two references who may be contacted by the Commission;
- (10) Any other information required by G.S. 143, Article 75 or these Rules in order to make a decision on the grant proposal;
- (11) An explanation of how the project will enhance North Carolina's tobacco-related economy for the common good; and
- (12) A list and history of the applicant's past projects funded by grants or awards.

(c) As a condition of applying for a compensatory program or of receiving a grant for a compensatory program, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0205 SPECIAL INFORMATION NEEDED FOR DIRECT COMPENSATORY PROGRAMS

If a request is for direct compensation or indemnification or for a program to administer direct compensation or indemnification to an eligible beneficiary or beneficiaries, then the application for the Compensatory Program must contain the following:

- (1) Documentation demonstrating the amount of actual loss of tobacco-related income in North Carolina in 1998 or years subsequent. An applicant may make such demonstration with:
 - (a) A verified letter from a Certified Public Accountant or an attorney licensed in North Carolina that details the amount of the actual loss; or
 - (b) That portion of a federal or state income tax return that shows a loss of tobacco-related income. (Please be aware that any such tax information included in an application will become part of the public record); or
 - (c) A verified statement from a North Carolina employer quantifying the applicant's loss in tobacco-related income in North Carolina for any given year from 1998 forward; or
 - (d) Any other similar reliable, accurate and verifiable documentation which the Commission may accept as proof of actual loss;
- (2) Documentation demonstrating that the amount of actual loss of tobacco-related income is attributable to the Master Settlement Agreement and not simply because of a

decline in quota not caused by the Master Settlement Agreement. Applicants may demonstrate the actual loss with verified information from an independent expert in the field, which expert may be, but is not limited to, an economist or an accountant. The Commission will compare this demonstration with any independent expert information it may have about losses caused by the Master Settlement Agreement and losses compensated by the National Tobacco Grower Settlement Trust; and

- (3) Documentation of any compensation received from the National Tobacco Grower Settlement Trust, or any other source to cover actual losses due to the Master Settlement Agreement, or a verified statement that no compensation was received from the National Tobacco Growers' Settlement Trust or from any other source to compensate losses caused by the Master Settlement Agreement.

History Note: Authority G.S. 143-718; 143-720; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0206 OUT OF CYCLE AWARD OF GRANTS

The Commission may consider and award grants for compensatory programs out of cycle 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 policy; or
- (3) The requested program is in response to a disaster as that term is defined in G.S. 166, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0207 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission and his or her staff or designee shall screen applications 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 Compensatory Program Review Committees of the Commission. Compensatory Program Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas.

(c) During the review and evaluation of proposals, the Compensatory Program Review Committees may request that

the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Compensatory Program Review Committees will make recommendations to the Commission. Scoring and rating of proposals may be determined by using any consistent rating methodology, including adjectival, numerical or ordinal rankings.

(d) The Commission will receive the suggestions of the Review Committees and will evaluate proposals based on the beneficial impact of the request on the State's tobacco-related economy. 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 and whether the grant will benefit tobacco dependent economies of the State in a measurable manner. Proposals will be given a preference for statewide impact and for containing a delivery mechanism to intended beneficiaries.

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

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003.*

02 NCAC 57 .0208 AWARD OF GRANTS

(a) The Commission will award grants if it determines that it has sufficient funds to do so. All applicants will be notified in writing whether they have received a grant or not.

(b) The grant proposal shall be incorporated into the grant, and the goals, time lines and other grant objectives shall be performance standards for the grant.

(c) Funds will be conveyed to grantees through contracts with the Commission.

(d) Of the total funds granted for each project, up to 100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines that the initial request is necessary for administration of the grant program.

(e) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.

(f) The Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the Compensatory Program.

(g) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding Compensatory Programs. The Commission shall not award money to an applicant whose past performance of a Commission grant or program has been unsatisfactory, according to these Rules.

(h) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings.

(i) 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 or may demand

immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds.

(j) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Temporary Adoption Eff. June 29, 2002;
Eff. April 15, 2003.*

02 NCAC 57 .0209 REPORTING

(a) Successful applicants shall submit written progress reports at six-month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the Compensatory Program, progress toward achieving program objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Compensatory Program, 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 the next grant payment.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003.*

02 NCAC 57 .0210 POLICIES GOVERNING COMPENSATORY PROGRAMS

(a) Successful applicants must keep financial and other records of the Compensatory Program for five years and must comply with audit requests. If the Commission 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 Compensatory Program.

(b) All applications, attachments to applications and written reports received by the Commission are public records, unless determined otherwise by court order or other applicable law.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003.*

02 NCAC 57 .0304 APPLICATIONS FOR GRANTS

(a) Grants proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. Applicants may also provide an electronic copy formatted in Microsoft Word to the Commission.

For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed 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 Tobacco Trust Fund Grant Application Form which shall contain the following information:

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) A description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and a list of the members of the Board of Directors. If the applicant involves more than one person, organization or entity, the applicant shall identify participating persons, organizations or entities and define their roles in completing the grant;
- (3) A description of the Qualified Agricultural Program, its objectives and the manner in which it will accomplish the requirement that the Qualified Agricultural Program foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy;
- (4) A detailed statement of the projected cost of the Qualified Agricultural Program, including any administrative costs and including expected funding from any other source;
- (5) A description of how the project will be completed including time lines;
- (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State auditor;
- (7) An explanation of how the project's results will be evaluated;
- (8) At least two references which the Commission may contact;
- (9) Any other information required by G.S. 143, Article 75 or by these Rules in order to make a decision on the grant proposal; and
- (10) A list and history of the applicant's past projects funded by grants or awards.

(c) As a condition of applying for the grant 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.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0305 OUT OF CYCLE CONSIDERATION OF GRANTS

The Commission may consider and award grants out of cycle if the following conditions are met:

- (1) The grant will respond to a serious and unforeseen threat to the public health, safety or

welfare; or

- (2) The grant is required in response to a recent change in federal or State budgetary policy; or
- (3) The grant is in response to a disaster as that term is defined in G.S. 166, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0306 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission and his or her staff or designee shall screen applications 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 and may include invited outsiders who have particular expertise in technical areas.

(c) During the review and evaluation of grant proposals, the Grant Review Committees may request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Grant Review Committees will make recommendations to the Commission based on its review and evaluation. Scoring and ranking of proposals may be determined by using any consistent rating methodology, including adjectival, numerical or ordinal rankings.

(d) The Commission will evaluate grant proposals and recommendations made to it by the Review Committees based on the beneficial impact of the grant request on the solvency and vitality of the tobacco-related segment of the State's agricultural economy.

(e) In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, how the grant project will alleviate or avoid unemployment, stabilize local tax bases, encourage the economic stability of participants in the State's agricultural economy or encourage the optimal use of natural resources in the tobacco-related segment of the State's agricultural economy. Proposals will be given a preference for statewide impact, for containing a delivery mechanism to intended beneficiaries, for providing alternate markets for tobacco or for providing for diversification of the tobacco crop or the tobacco grower.

(f) No grant shall be awarded that is unlawful.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0307 AWARD OF GRANTS

(a) The Commission will award grants to proposals which have the greatest impact on the long-term health of the State's tobacco-related agricultural economy. All applicants will be notified in writing whether they have received a grant or not. The Commission will award grants if it determines that it has sufficient funds to do so.

- (b) The grant proposal shall be incorporated into the grant, and the goals, time lines and other grant objectives shall be performance standards for the grant.
- (c) Funds will be conveyed to grantees through contracts with the Commission.
- (d) Of the total funds granted for each project, up to 100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines the request is necessary for the administration of the grant program.
- (e) Other payments to grantees shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.
- (f) The Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the grant.
- (g) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award a grant to an applicant whose past performance of Commission grants or programs has been unsatisfactory, according to these Rules.
- (h) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings.
- (i) 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 or may demand immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds.
- (j) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

History Note: Authority G.S. 143-718; 143-721; Temporary Adoption Eff. May 15, 2002; Temporary Adoption Eff. June 29, 2002; Eff. April 15, 2003.

02 NCAC 57 .0308 REPORTING

- (a) Grantees shall submit written progress reports at six-month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the grant projects, progress toward achieving project objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Project, the grantee must make a final written report to the Commission which final report shall include an evaluation of the success of the project.
- (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 within the specified time, the Commission may withhold the next payment under the grant.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

02 NCAC 57 .0309 POLICIES GOVERNING QUALIFIED AGRICULTURAL PROGRAM GRANTS

- (a) Grantees must keep financial and other records of the grant project for five years and must comply with audit requests. If the Commission determines that the size of the grant or the performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the grant.
- (b) All grant applications, attachments to grant applications and written reports received by the Commission are public records, unless determined otherwise by court order, or other applicable law.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003.

TITLE 4 – DEPARTMENT OF COMMERCE

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is expressly provided or clearly required by the context:

- (1) Terms used in this Subchapter which are defined in the Act shall have the same meaning as set forth in the Act.
- (2) When any term herein is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, such reference shall be deemed to be to such regulation or rule as the same is in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means G.S. 53-243.01 through G.S. 53-243.15, commonly known as the "Mortgage Lending Act", as the same may be codified and as amended from time to time.
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term shall not include any disclosures, program descriptions, or other materials prepared or

- authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- (5) "Certified statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
 - (6) "Commission" means the North Carolina Banking Commission.
 - (7) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
 - (8) "Controlling person" means a person who, with regard to a licensee:
 - (a) has the ability to exercise "control", as such term is defined in G.S. 53-243.01(6), or
 - (b) otherwise has the power to direct the management and policy of the licensee.
 - (9) "Fundamentals Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).
 - (10) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
 - (11) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
 - (12) "License" means a mortgage lender, mortgage broker or loan officer license issued pursuant to the Act and this Subchapter.
 - (13) "Material" facts or "Material" information are facts or information, or changes in such facts or information, that, if known, would be likely to influence a decision to grant or revoke a license or to take other disciplinary action against a licensee or exempt person.
 - (14) "Program" means either a fundamentals or continuing education program.
 - (15) "Provider" means any person who provides a program.
 - (16) "Testing Service" means an organization selected by the Commissioner to develop and administer the examination.

History Note: Authority G.S. 53-243.04; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003.

04 NCAC 03M .0102 NOTICES

(a) Except as may be provided in G.S. 150B or the rules of the North Carolina Office of Administrative Hearings, any notice, pleading, decision or other communication required or permitted to be given by the Commissioner to a licensee, an applicant for a

license or an exempt person shall be considered given when deposited in the United States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided by the addressee.

(b) Any application for licensure, report, annual statement, amendment to application, notice or other document which is required or permitted by law or rule to be filed with the Commissioner shall be in writing, signed by the sender or a principal officer and shall be effective upon actual receipt at the following address: Ordinary mail: North Carolina Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699-4309; Overnight mail service or hand delivery: North Carolina Commissioner of Banks, 316 W. Edenton Street, Raleigh, NC 27603.

History Note: Authority G.S. 53-243.04; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003.

04 NCAC 03M .0201 APPLICATION

- (a) All fees required by G.S. 53-243.05 shall be submitted with an application for licensure as a mortgage banker, mortgage broker or loan officer. Such fees are nonrefundable.
- (b) Each type of application shall be in writing on a form provided by the Commissioner, shall be accompanied by all information required by these Rules or statute and shall verified by the oath of the applicant or a principal officer thereof.
- (c) In addition to the documents and information required by these rules the Commissioner or his or her staff may require additional information according to the rules in order to enable the Commissioner to make the determinations required by G.S. 53-243.05(i).
- (d) Applications submitted without the required fees or which are missing material information shall be held in inactive status for a period of 30 calendar days after written notice to the applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 30 days, the application shall automatically be considered denied without further action by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

History Note: Authority G.S. 53-243.04; 53-243.05; 53-243.06; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003.

04 NCAC 03M .0202 NONTRANSFERABILITY

- (a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:
 - (1) be ineffective;
 - (2) be grounds for immediate revocation of such license; and
 - (3) render the assignor licensee responsible for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.
- (b) A change in the identity of a licensee's controlling person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license.

However, the Commissioner shall permit such change without requiring the licensee to apply for a new license, provided:

- (1) the licensee gives notice to the Commissioner at least 60 days in advance of the effective date of the proposed change; and
- (2) the Commissioner determines that permitting the licensee to continue to operate under its existing license would not be inconsistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph (b)(2) of this Rule.

(d) The Commissioner may waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if circumstances beyond the licensee's reasonable control would make strict compliance therewith unduly burdensome to the licensee.

History Note: Authority G.S. 53-243.04; 53-243.05; 53-243.12; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003

04 NCAC 03M .0204 EXPERIENCE

(a) As used in G.S. 243.05(c)(1), a person shall be considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) that person's employment income was principally derived from employment in the mortgage banking, banking or mortgage brokerage industry; and
- (2) he or she had actual responsibility for job functions in each area of study included in a fundamentals program approved by the Commissioner pursuant to 4 NCAC 03M .0301(c).

(b) Persons to whom a mortgage lender or mortgage broker license is issued pursuant to Sections 5(a) or 5(c) of the S.L. 2001-393 shall comply with the minimum experience requirements of G.S. 53-243.05(c) by not later than the date the licensee files for renewal of such license for the July 1, 2003 - June 30, 2004 license year.

History Note: Authority G.S. 53-243.05; Eff. April 1, 2003.

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program pursuant to this Rule. The Commissioner shall make available to the public a current listing of approved providers. The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.

(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific

programs. The application shall be upon a form provided by the Commissioner and shall include the following information:

- (1) the name and address of the provider and date(s) on and locations at which the program is to be offered;
- (2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);
- (3) the costs of all programs for which approval is sought; and
- (4) a description of each program for which approval is sought.

A prospective provider will be approved if the Commissioner determines that its general business experience, its knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of professional educational presentations and the quality of such presentations warrant belief that its fundamentals or continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.

(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in the following: basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations.

(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information than the fundamentals program.

(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.

(f) The Commissioner may deny, revoke, suspend, or terminate approval of any provider or any individual program upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provision of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner information or properly completed forms prescribed by the Commissioner; or
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions; or
- (3) during any six month period fewer than 50 percent of the provider's fundamentals program students taking the examination for the first time achieve a passing score; or
- (4) the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period; or
- (5) the provider has knowingly employed in connection with any program any person who

has been convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii).

History Note: Authority G.S. 243.05; 53-243.07;
Eff. April 1, 2003.

04 NCAC 03M .0302 LOAN OFFICER EXAMINATION

Examinations shall be administered by the testing service no less frequently than quarterly throughout North Carolina. The testing service shall maintain and publish a current schedule of times and locations at which the examination will be administered.

History Note: Authority G.S. 53-243.05;
Eff. April 1, 2003.

04 NCAC 03M .0303 REQUIREMENTS FOR PROVIDERS

- (a) A provider shall designate one person as its contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.
- (b) Providers shall retain the following material from each program on file at one location for a minimum of three years: class schedules; advertisements; bulletins, catalogues, and other publications distributed to students; a list of student names, with social security numbers, for each program; and the name of the instructor. All files shall be made available to the Commissioner upon request.
- (c) A provider shall not use any words, symbols or other means to indicate that either the provider or a program has received the Commissioner's approval unless such approval has been issued and remains in effect.
- (d) A provider shall publish and provide to all prospective students prior to or simultaneous with their enrollment a writing which contains the information described in 4 NCAC 03M .0301(b)(1) – (4).

History Note: Authority G.S. 53-243.05; 53-243.07;
Eff. April 1, 2003.

04 NCAC 03M .0401 ANNUAL REPORTING REQUIREMENTS

- (a) No later than 90 days after the end of a mortgage banker licensee or mortgage broker licensee's fiscal year, it shall file an annual report. The report shall be filed on a form provided by the Commissioner and shall be supplemented or accompanied by a certified statement of financial condition.
- (b) The annual report required by this Rule shall be verified by the oath of the licensee or a principal officer thereof.
- (c) Failure of a licensee to submit an annual report in the manner required by this Rule shall be grounds for discipline pursuant to G.S. 53-243.12.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER

(a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information previously submitted to the Commissioner during the application process, upon filing of the annual statement, or otherwise filed with the Commissioner.

(b) Notification shall be accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rule .0201 and .0401, respectively, of this Subchapter.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

04 NCAC 03M .0403 TERMINATION OF OPERATIONS

A licensee shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within seven days of such decision.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED

- (a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.
- (b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.
- (c) The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law.
- (d) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months.
- (e) A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any depository.

History Note: Authority G.S. 53-243.13;
Eff. April 1, 2003.

04 NCAC 03M .0502 FORM AND LOCATION

- (a) Except for samples of advertising materials retained pursuant to 4 NCAC 03M .0501(d), all records required by this Section shall be kept for a period of at least three years, and shall be available for inspection and copying upon request by the Commissioner.
- (b) Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium

that is convertible by the Commissioner into legible, tangible documents.

(c) All records required by this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.

(d) All records required to be maintained shall be secured against unauthorized access and damage in an accessible location within the State of North Carolina. However, a mortgage banking licensee which maintains a centralized out-of-state storage facility for such records from multiple states may request the Commissioner to approve its storage of such records in such out-of-state location. Such requests will be approved provided that:

- (1) The Commissioner determines that the proposed storage will ensure that the records are secured against unauthorized access and damage; and
- (2) The licensee agrees in writing to make available at its expense for inspection and copying upon request by the Commissioner copies of all requested records in a form which satisfies the requirements of Subsection (b) of this Rule.

(e) A licensee shall notify the Commissioner of any change in the location of its books and records within 10 days following such change.

History Note: Authority G.S. 53-243.13; Eff. April 1, 2003.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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) The facility shall 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.
- (2) In the absence of any requirements by other authorities having jurisdiction, the facility shall 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 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.

History Note: Authority G.S. 131E-149; Eff. April 1, 2003.

Note: This rule proposed for April 1, 2003 is replaced by a temporary amendment effective January 1, 2003.

10 NCAC 03R .1125 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.
- (b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be stated.
- (c) An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within 45 minutes normal automobile driving time (one-way) from the facility, with the exception that this standard shall be waived for applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.
- (d) An applicant proposing to establish a new nursing facility or adult care home shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one

alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.

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

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

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .2714 INFORMATION REQUIRED OF APPLICANT

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

(b) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:

- (1) documentation that the MRI scanner shall be available and staffed for use at least 66 hours per week, with the exception of a mobile MRI scanner;
- (2) projections of the annual number of procedures to be performed by type of service and the average charge for each proposed procedure for each of the first three years of operation after completion of the project. This information shall be provided separately for each proposed host facility if the application proposes the acquisition of a mobile MRI scanner;
- (3) documentation of the need for an additional MRI scanner in the proposed MRI service area and description of the methodology used to project need, including all assumptions regarding the population to be served;
- (4) documentation that the proposed MRI scanner, including a mobile MRI scanner, shall have affiliation agreements or referral agreements with respect to the following diagnostic modalities:
 - (A) radio isotopic imaging studies,
 - (B) diagnostic X-Ray studies,
 - (C) angiograms, including digital,
 - (D) diagnostic ultrasound studies, and
 - (E) computed tomography (full body);
- (5) except for proposed MRI scanners to be used exclusively for research purposes, documentation that all equipment, supplies and

pharmaceuticals proposed for the service have been certified for clinical use by the U.S. Food and Drug Administration or shall be operated under an institutional review board whose membership is consistent with U.S. Department of Health and Human Service regulations, with the exception that this requirement does not apply to the use of gadolinium in children if written consent is obtained from the parents stating that they understand that gadolinium has been FDA approved for adults, but not for children at this time;

- (6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner; and
- (7) copies of agreements that have been established to accommodate referrals from other facilities in the MRI service area.

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

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

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

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .3704 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document how medical emergencies within the PET scanner unit will be managed at each facility where the PET scanner will be operated.

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

- (1) an off-site medical cyclotron and radioisotope production facility that is located within two hours transport time to each facility where the PET scanner will be operated;
- (2) an on-site rubidium-82 generator; or

- (3) an on-site medical cyclotron for radio nuclide production and a chemistry unit for labeling radioisotopes.

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

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

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

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .6385 POLICIES FOR GENERAL ACUTE CARE HOSPITALS

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 03C .3102(d) and Section .6200.

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in Paragraph (d) of this Rule are assumed to have underutilized space. Any such hospital proposing new construction must clearly and convincingly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects.

- (1) Exemption from the provisions of 10 NCAC 03R .6356 through .6384 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated in the State Medical Facilities Plan prior to January 1, 1990 which projects comply with one of the following conditions:
 - (A) necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or

- (B) necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
- (C) necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(2) A project submitted by an Academic Medical Center Teaching Hospital under this Rule that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital.

(3) Any health service facility or health service facility bed that results from a project submitted under this Rule after January 1, 1999 shall be excluded from the inventory of that health service facility or health service facility bed in the State Medical Facilities Plan.

(4) The Academic Medical Center Teaching Hospitals designated in the State Medical Facilities Plan prior to January 1, 1990 and their dates of designation are as follows:

North Carolina Baptist Hospital	February 16, 1983
Duke University Medical Center	July 21, 1983
North Carolina Memorial Hospital	August 8, 1983
Pitt County Memorial Hospital	August 8, 1983

(d) Reconversion to Acute Care. Facilities that have redistributed beds from acute care bed capacity to psychiatric, rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 03R .6356.

Licensed Acute Care Bed Capacity	Percent Occupancy
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(e) Replacement of Acute Care Bed Capacity. The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds)

shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets which follow. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

Total Licensed Acute Care Beds	Target Occupancy (Percent)
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(f) Heart-Lung Bypass Machines for Emergency Coverage. To protect cardiac surgery patients, who may require emergency procedures while scheduled procedures are underway, a need is determined for one additional heart-lung bypass machine whenever a hospital is operating an open heart surgery program with only one heart-lung bypass machine. The additional machine is to be used to assure appropriate coverage for emergencies and in no instance shall this machine be scheduled for use at the same time as the machine used to support scheduled open heart surgery procedures. A certificate of need application for a machine acquired in accordance with this provision shall be exempt from compliance with the performance standards set forth in 10 NCAC 03R .1715(2).

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 14G .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 14G, 14H, 14I, and 14J of this Chapter.

(b) As used in the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means; or unreasonable confinement; or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
 - (A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated

- (B) supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or
- (C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or
- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom

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- facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Client record" means any record made of confidential information.
- (7) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (8) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (9) "Consent" means concurrence by a client or his legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (10) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (11) "Division Director" means the Director of the Division or his designee.
- (12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(25) of this Rule for definition of medical emergency].
- (13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(25) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (15) "Exploitation" means the use of a client or her/his resources including borrowing, taking or using personal property with or without her/his permission for another person's profit, business or advantage.
- (16) "Forensic Division" means the unit at Dorothea Dix Hospital which serves clients who are:
- (A) admitted for the purpose of evaluation for capacity to proceed to trial;
 - (B) found not guilty by reason of insanity;
 - (C) determined incapable of proceeding to trial; or
 - (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.
- (17) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation within the jurisdiction of the state facility. A grievance does not include complaints that can be resolved without delay by staff present. A complaint that is not resolved shall be filed and processed in accordance with the requirements of 10 NCAC 14H .0203.
- (18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.
- (19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (20) "Interpreter services" means specialized communication services provided for the hearing impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- (21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002

- unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- (22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- (23) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (24) "Major physical injury" means damage caused to the body resulting in profuse bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- (25) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- (26) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- (27) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (28) "Neglect" means the failure to provide care or services necessary to maintain the mental and physical health of the client.
- (29) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (30) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001
- to provide a mh/dd/sa service. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- (31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (32) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.
- (33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 14J, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 14J.
- (34) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It

- includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.
- (35) "Qualified professional" means, within the mh/dd/sas system of care, an individual who is:
- (A) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or
 - (B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (36) "Regional alcohol and drug abuse treatment center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (37) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).
- (38) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (39) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (40) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (41) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (42) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35) of this Rule.
- (43) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment Program Maximum Security Ward in the Spruill Building at Dorothea Dix Hospital, the use of locked rooms is not considered seclusion for clients with criminal charges who are:
- (A) undergoing pretrial evaluations ordered by a criminal court;
 - (B) in treatment for restoration of capacity to proceed;
 - (C) in treatment to reduce violence risk; or
 - (D) considered to be an escape risk.
- (44) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.
- (45) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (46) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (47) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (48) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.
- (49) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately

- assess and address the identified needs of the client.
- (50) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been assigned to a director, supervisor, administrator, or manager.
- (51) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147; Eff. October 1, 1984; Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
- (a) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or
- (b) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be

- provided by a qualified professional with the population served until the individual meets two years of experience; or
- (c) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or
- (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (2) "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (3) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Certified substance abuse prevention consultant (CSAPC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Board.
- (7) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- (8) "Clinical staff member" means a qualified professional or associate professional who provides active direct treatment/habilitation to a client.

- (9) "Clinical/professional supervision" means regularly scheduled assistance by a qualified professional or associate professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- (10) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- (11) "Director" means the individual who is responsible for the operation of the facility.
- (12) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (13) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (14) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- (15) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.
- (16) "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina as either a licensed psychologist or a licensed psychological associate.
- (17) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- (18) "Qualified professional" means, within the mh/dd/sas system of care:
- (a) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or
 - (b) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (c) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (d) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.

History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; Eff. May 11, 1996; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .0202 PERSONNEL REQUIREMENTS

- (a) All facilities shall have a written job description for the director and each staff position which:
- (1) specifies the minimum level of education, competency, work experience and other qualifications for the position;
 - (2) specifies the duties and responsibilities of the position;
 - (3) is signed by the staff member and the supervisor; and
 - (4) is retained in the staff member's file.
- (b) All facilities shall ensure that the director, each staff member or any other person who provides care or services to clients on behalf of the facility:

- (1) is at least 18 years of age;
- (2) is able to read, write, understand and follow directions;
- (3) meets the minimum level of education, competency, work experience, skills and other qualifications for the position; and
- (4) has no substantiated findings of abuse or neglect listed on the North Carolina Health Care Personnel Registry.

(c) All facilities or services shall require that all applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

(d) Staff of a facility or a service shall be currently licensed, registered or certified in accordance with applicable state laws for the services provided.

(e) A file shall be maintained for each individual employee indicating the training, experience and other qualifications for the position, including verification of licensure, registration or certification.

(f) Continuing education shall be documented.

(g) Employee training programs shall be provided and, at a minimum, shall consist of the following:

- (1) general organizational orientation;
- (2) training on client rights and confidentiality as delineated in 10 NCAC 14P-S and 10 NCAC 18D;
- (3) training to meet the mh/dd/sa needs of the client as specified in the treatment/habilitation plan; and
- (4) training in infectious diseases and bloodborne pathogens.

(h) Except as permitted under 10 NCAC 14V .5602(b) of this Subchapter, at least one staff member shall be available in the facility at all times when a client is present. That staff member shall be trained in basic first aid including seizure management, currently trained to provide cardiopulmonary resuscitation and trained in the Heimlich maneuver or other first aid techniques such as those provided by Red Cross, the American Heart Association or their equivalence for relieving airway obstruction.

(i) The governing body shall develop and implement policies and procedures for identifying, reporting, investigating and controlling infectious and communicable diseases of personnel and clients.

History Note: Authority G.S. 122C-26; Eff. May 1, 1996; Temporary Amendment Eff. January 3, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .0203 COMPETENCIES OF QUALIFIED PROFESSIONALS AND ASSOCIATE PROFESSIONALS

(a) There shall be no privileging requirements for qualified professionals or associate professionals.

(b) Qualified professionals and associate professionals shall demonstrate knowledge, skills and abilities required by the population served.

(c) At such time as a competency-based employment system is established by rulemaking, then qualified professionals and associate professionals shall demonstrate competence.

(d) Competence shall be demonstrated by exhibiting core skills including:

- (1) technical knowledge;
- (2) cultural awareness;
- (3) analytical skills;
- (4) decision-making;
- (5) interpersonal skills;
- (6) communication skills; and
- (7) clinical skills.

(e) Qualified professionals as specified in 10 NCAC 14V .0104 (18)(a) are deemed to have met the requirements of the competency-based employment system in the State Plan for MH/DD/SAS.

(f) The governing body for each facility shall develop and implement policies and procedures for the initiation of an individualized supervision plan upon hiring each associate professional.

(g) The associate professional shall be supervised by a qualified professional with the population served for the period of time as specified in Rule .0104 of this Subchapter.

History Note: Authority G.S. 122C-26; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired October 13, 2001; Temporary Adoption Eff. November 1, 2001; Eff. April 1, 2003.

10 NCAC 14V .0204 COMPETENCIES AND SUPERVISION OF PARAPROFESSIONALS

(a) There shall be no privileging requirements for paraprofessionals.

(b) Paraprofessionals shall be supervised by an associate professional or by a qualified professional as specified in Rule .0104 of this Subchapter.

(c) Paraprofessionals shall demonstrate knowledge, skills and abilities required by the population served.

(d) At such time as a competency-based employment system is established by rulemaking, then qualified professionals and associate professionals shall demonstrate competence.

(e) Competence shall be demonstrated by exhibiting core skills including:

- (1) technical knowledge;
- (2) cultural awareness;
- (3) analytical skills;
- (4) decision-making;
- (5) interpersonal skills;
- (6) communication skills; and
- (7) clinical skills.

(f) The governing body for each facility shall develop and implement policies and procedures for the initiation of the individualized supervision plan upon hiring each paraprofessional.

History Note: Authority G.S. 122C-26; Temporary Adoption Eff. January 1, 2001;

*Temporary Adoption Expired October 13, 2001;
Temporary Adoption Eff. November 1, 2001;
Eff. April 1, 2003.*

10 NCAC 14V .5601 SCOPE

(a) Supervised living is a 24-hour facility which provides residential services to individuals in a home environment where the primary purpose of these services is the care, habilitation or rehabilitation of individuals who have a mental illness, a developmental disability or disabilities, or a substance abuse disorder, and who require supervision when in the residence.

(b) A supervised living facility shall be licensed if the facility serves either:

- (1) one or more minor clients; or
- (2) two or more adult clients.

Minor and adult clients shall not reside in the same facility.

(c) Each supervised living facility shall be licensed to serve a specific population as designated below:

- (1) "A" designation means a facility which serves adults whose primary diagnosis is mental illness but may also have other diagnoses;
- (2) "B" designation means a facility which serves minors whose primary diagnosis is a developmental disability but may also have other diagnoses;
- (3) "C" designation means a facility which serves adults whose primary diagnosis is a developmental disability but may also have other diagnoses;
- (4) "D" designation means a facility which serves minors whose primary diagnosis is substance abuse dependency but may also have other diagnoses;
- (5) "E" designation means a facility which serves adults whose primary diagnosis is substance abuse dependency but may also have other diagnoses; or
- (6) "F" designation means a facility in a private residence, which serves no more than three adult clients whose primary diagnoses is mental illness but may also have other disabilities, or three adult clients or three minor clients whose primary diagnoses is developmental disabilities but may also have other disabilities who live with a family and the family provides the service. This facility shall be exempt from the following rules: 10 NCAC 14V .0201 (a)(1),(2),(3),(4),(5)(A)&(B); (6); (7)(A),(B),(E),(F),(G),(H); (8); (11); (13); (15); (16); (18) and (b); 10 NCAC 14V .0202(a),(d),(g)(1)(i); 10 NCAC 14V .0203; 10 NCAC 14V .0205 (a),(b); 10 NCAC 14V .0207 (b),(c); 10 NCAC 14V .0208 (b),(e); 10 NCAC 14V .0209[(c)(1) – non-prescription medications only] (d)(2),(4); (e)(1)(A),(D),(E);(f);(g); and 10 NCAC 14V .0304 (b)(2),(d)(4). This facility shall also be known as alternative family living or assisted family living (AFL).

*History Note: Authority G.S. 143B-147;
Eff. May 1, 1996;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003.*

10 NCAC 14V .5602 STAFF

(a) Staff-client ratios above the minimum numbers specified in Paragraphs (b), (c) and (d) of this Rule shall be determined by the facility to enable staff to respond to individualized client needs.

(b) A minimum of one staff member shall be present at all times when any adult client is on the premises, except when the client's treatment or habilitation plan documents that the client is capable of remaining in the home or community without supervision. The plan shall be reviewed as needed but not less than annually to ensure the client continues to be capable of remaining in the home or community without supervision for specified periods of time.

(c) Staff shall be present in a facility in the following client-staff ratios when more than one child or adolescent client is present:

- (1) children or adolescents with substance abuse disorders shall be served with a minimum of one staff present for every five or fewer minor clients present. However, only one staff need be present during sleeping hours if specified by the emergency back-up procedures determined by the governing body; or
- (2) children or adolescents with developmental disabilities shall be served with one staff present for every one to three clients present and two staff present for every four or more clients present. However, only one staff need be present during sleeping hours if specified by the emergency back-up procedures determined by the governing body.

(d) In facilities which serve clients whose primary diagnosis is substance abuse dependency:

- (1) at least one staff member who is on duty shall be trained in alcohol and other drug withdrawal symptoms and symptoms of secondary complications to alcohol and other drug addiction; and
- (2) the services of a certified substance abuse counselor shall be available on an as-needed basis for each client.

*History Note: Authority G.S. 143B-147;
Eff. May 1, 1996;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003.*

10 NCAC 14V .5603 OPERATIONS

(a) Capacity. A facility shall serve no more than six clients when the clients have mental illness or developmental disabilities. Any facility licensed on June 15, 2001, and providing services to more than six clients at that time, may continue to provide services at no more than the facility's licensed capacity.

- (b) Service Coordination. Coordination shall be maintained between the facility operator and the qualified professionals who are responsible for treatment/habilitation or case management.
- (c) Participation of the Family or Legally Responsible Person. Each client shall be provided the opportunity to maintain an ongoing relationship with her or his family through such means as visits to the facility and visits outside the facility. Reports shall be submitted at least annually to the parent of a minor resident, or the legally responsible person of an adult resident. Reports may be in writing or take the form of a conference and shall focus on the client's progress toward meeting individual goals.
- (d) Program Activities. Each client shall have activity opportunities based on her/his choices, needs and the treatment/habilitation plan. Activities shall be designed to foster community inclusion. Choices may be limited when the court or legal system is involved or when health or safety issues become a primary concern.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 14V .5604 REQUIREMENTS FOR STATE/COUNTY SPECIAL ASSISTANCE RECIPIENTS

The following applies to facilities under Rule .5601 in Subparagraph (c)(1), (3) and (6) of this Section that admit clients who participate in the Special Assistance Program administered by the Division of Social Services:

- (1) the facility shall be in compliance with the rules of this Subchapter prior to admitting Special Assistance Program recipients and receiving payment through the Special Assistance Program;
- (2) forms required by the Secretary pursuant to these Rules which have been signed by a qualified professional shall be filed in the client's record and renewed annually; and
- (3) the facility shall submit a signed DSS-1464 (Civil Rights Compliance Form) upon request and comply with the legal requirements as set forth in the Civil Rights Act of 1964.

History Note: Authority G.S. 143B-147; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 22G .0505 STAFFING

Staffing requirements for nutrition service providers shall be:

- (1) Each nutrition service provider that receives Home and Community Care Block Grant funds shall make arrangements for a qualified dietitian or nutritionist to certify the menu. A qualified dietitian or nutritionist is a licensed dietitian/nutritionist as defined in G.S. 90-350.
- (2) The nutrition service provider shall provide staff to operate the program including a nutrition program director and, if funded for congregate nutrition, a site manager.

- (3) The nutrition program director must be empowered with the authority necessary to conduct the day-to-day management and administrative functions.
- (4) The site manager may be paid from Home and Community Care Block funds for no more than four hours per day.
- (5) Nutrition service providers shall recruit, orient, train, and supervise volunteers to assist in nutrition program services and activities.
- (6) Training Requirements:
 - (a) Nutrition program directors must complete within 12 months of employment at least 15 hours of instruction in food service sanitation practices.
 - (b) Within 12 months of employment the nutrition program director must participate in training on Nutrition Program Management arranged by the Division of Aging.
- (7) The following staff shall have knowledge of the following:
 - (a) Nutrition Program Directors: administration procedures, record keeping systems, reporting, food safety, food service.
 - (b) Site Manager: (for Congregate Nutrition Sites) site operations, site records, community resources and methods of referrals, food safety, and food portioning.
 - (c) Volunteers: site procedures for specific volunteer activities.
 - (d) All staff: aging process and fire/disaster evacuation.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1 (c); 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Amended Eff. July 1, 2003; November 1, 1993; April 1, 1990.

10 NCAC 22G .0510 FOOD PREPARATION AND SAFETY REQUIREMENTS

All congregate and home delivered meal nutrition services providers shall meet the following requirements, in addition to those specified in the federal regulations:

- (1) Food Preparation.
 - (a) Each nutrition provider must abide by food safety and sanitation practices required in the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600).
 - (b) All staff working in the preparation of food shall be under the supervision of a person who shall insure the application of hygienic techniques and practices in food handling, preparation and service. This supervisory person shall consult with

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| <p>(c) the nutrition service provider's dietitian for advice and consultation as necessary.</p> <p>(c) Recipes adjusted to yield the number of servings needed shall be used to achieve a consistent quality and quantity of meals.</p> <p>(d) All foods shall be prepared and served in a manner to present optimum flavor and appearance, while retaining nutrients and food value.</p> <p>(2) Home-delivered Meal Packaging and Packing Standards.</p> <p>(a) All meals packaged at nutrition sites for home delivery shall be individually packaged first (before congregate meals are served) and packed in secondary insulated food carriers with tight fitting lids and transported immediately.</p> <p>(b) All home-delivered meals pre-plated at food preparation centers shall be individually packaged and packed in secondary insulated food carriers with tight fitting lids and transported immediately.</p> <p>(c) Only divided containers with air-tight seals shall be used for hot food. Bread shall not be placed on top of other food.</p> <p>(d) Cold and hot food shall be packaged and packed separately.</p> <p>(e) Individual containers with tight-fitting coverings shall be used for all cold food. "Sandwich" type bags that can be sealed may be used for bread.</p> <p>(f) All food delivery carriers must meet National Sanitation Foundation Standards (pursuant to the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" at 15A NCAC 18A .2600) and must be sanitized daily by the food service provider.</p> <p>(3) Food Safety.</p> <p>(a) All food shall be packaged and transported in a manner to protect against potential contamination including dust, insects, rodents, unclean equipment and utensils, and unnecessary handling. Packaging and transport equipment must maintain food temperatures that meet the requirements of the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600). Records of all temperature checks shall be kept on file for audit by the service provider.</p> | <p>(b) Nutrition service providers shall educate participants and all staff regarding the sources and prevention of foodborne illness.</p> <p>(c) All nutrition providers and food preparation sub-contractors shall follow the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600) to maintain a Grade A sanitation rating.</p> <p>(d) Food prepared, frozen, or canned in the home shall not be served at the site.</p> <p>(e) Food from unlabeled, rusty, leaking, or broken containers or cans with side dents, rim dents, or swells shall not be used.</p> <p>(f) All meat and poultry, fresh or frozen, used in the meals must be inspected by USDA, the N.C. Department of Agriculture and Consumer Services, or other states' agencies having regulatory authority, from Federally or State inspected plants, and must bear inspection stamps on the box or package.</p> <p>(g) All foods used in the meals must be from sources approved by USDA, FDA, the N.C. Department of Agriculture and Consumer Services, or other states' agencies having regulatory authority; be in compliance with applicable state and local laws, ordinances, and regulations; and be clean, wholesome, free from spoilage, free from adulteration and mislabeling, and safe for human consumption.</p> <p>(h) Fresh raw fish must bear the PUFIS (Packed Under Federal Inspection) Shield.</p> <p>(i) Fresh fruits and vegetables free from disease and infestation may be donated and incorporated into their menu only when they can be used to serve all participants. Prior to use, all fruits and vegetables shall be washed to remove dirt or insecticide residues.</p> <p>(j) Food temperatures must be taken and recorded immediately before serving congregate meals. If warming equipment or refrigeration equipment is used to hold food prior to serving, then temperatures also must be taken and recorded at the time of food delivery. Food temperatures shall be recorded by the name of each specific food item. All temperature records must be maintained until audited.</p> |
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- (k) Temperature checks shall be made at least one time per month on each home-delivered meal route to document that food temperatures meet the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600).
- (l) The area where meals are handled or served must be kept clean and in good repair.

- (2) All regular menus shall be submitted to the dietitian/nutritionist for review and approval at least two weeks prior to use.
- (3) The approved menus shall be kept on file, with any changes in writing, for at least one year by the service provider.
- (4) At least one hot or cold nutritious meal shall be provided daily at least five days a week. Frozen, canned, dehydrated, or nutritional supplement products may also be used for emergency situations and additional or weekend meals. All frozen meals shall be dated with the delivery dates.
- (5) Menus with serving dates must be posted in a conspicuous location in each congregate meal site as well as each preparation area.
- (6) All menus shall be adhered to subject to seasonable availability of food items as well as availability of USDA donated food.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Amended Eff. July 1, 2003; November 1, 1993.

10 NCAC 22G .0512 MENU PLANNING REQUIREMENTS

(a) Agencies providing congregate nutrition or home delivered meal services must comply with the following menu planning requirements:

- (1) Each meal served shall contain at least one-third of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. If a nutrition program provides additional meals, then the nutrient analysis of the combined food items may be used to document that at least two-thirds of the Recommended Dietary Allowances have been provided for two meals per day or 100% of the Recommended Dietary Allowances for three meals per day, rather than each individual meal providing one-third of the nutrients.
- (2) All foods must be identified on the menu in order to calculate nutrient value.
- (3) The calorie content must be at least 700 calories per meal.
- (4) The sodium content shall not exceed 1,300 mg per meal.
- (5) Recipes for all foods used in combination must be supplied to the person responsible for certifying the menu to facilitate nutrient analysis. When recipe ingredients are changed, the recipe must be re-submitted for approval by the licensed dietitian/nutritionist.
- (6) All prepared or breaded meat items or meat in combination must be specified on the menu.
- (7) The form of vegetable or fruit used (fresh, frozen, dried, or canned) must be indicated on the menu for nutrient analysis.

(b) Menu Requirements

- (1) All menus shall be written at least 20 days in advance of the meal and shall be certified by a licensed dietitian/nutritionist to assure the menus provide one-third of the current Recommended Daily Allowances.

(c) Therapeutic Diet Standards.

- (1) Prior to serving a therapeutic diet, a physician's prescription written according to the guidelines in the current North Carolina Dietetic Association Diet Manual shall be on file with the nutrition service provider.
- (2) Each therapeutic diet prescription shall be re-ordered in writing by the physician every six months. Menus for each type of therapeutic diet must be written by a qualified dietitian/nutritionist. Menus for the therapeutic diets shall follow the standard set forth in the North Carolina Dietetic Association Diet Manual. These menus shall remain on file for at least one year.

(d) Each food group and amount of the following "Menu Pattern" shall be offered and must be available to be served to each participant.

<u>MENU PATTERN FOOD GROUP</u>	<u>AMOUNT</u>
Meat/Meat Alternative	2 ounces cooked, edible portion or equivalent
Bread/Grains	2 servings
Vegetables/Fruits	2 servings
Fats	total fat not to exceed 30% of total calories per meal
Dairy	1 serving

(1) Meat/Meat Alternative Group.

- (A) The total protein content of each meal must be no less than 21 grams. Of this, 14 grams must be a "complete protein" in the form of 2 oz. edible meat, fish or poultry, exclusive of fat, bone, or gristle. One-half cup cooked drained dried beans, peas or lentils may be used as a substitute for 1 oz. of meat. One cup of dried beans may be used as a substitute for 2 oz. meat; however, a "complementary" protein

- source must be served at the same meal with the one cup dried beans in order to serve a complete protein (i.e., rice, corn, or cornbread). Other protein sources such as one egg or two tablespoons peanut butter may also be substituted for 1 oz. meat.
- (B) Ground meat may be used in entrees no more than twice in one week. Casseroles or other mixed dishes must have ingredients specified on the menu to facilitate nutrient analysis.
- (2) Bread/Grains Group. Each meal shall contain two servings of a whole grain or enriched grain product.
- (3) Vegetable/Fruit Group.
 - (A) Each meal must contain two servings of different fruits and vegetables. When salad is served, it must be placed in a separate compartment of a compartmental tray to avoid mixing with other foods or served in a separate salad bowl. Juice may fulfill no more than half of the vegetable/fruit requirement for any one meal.
 - (B) One serving of vitamin C rich food must be served twice per week. The USDA Food Values Handbook lists all foods containing Vitamin C.
- (4) Fat Group. Total fat shall not exceed 30% of the total calories per meal. One teaspoon of butter or fortified margarine in an individual covered package chip or container may be used if it adds palatability to the menu. The menu must identify whether gravy, salad dressing, mayonnaise, margarine or butter is used when served.
- (5) Dairy Group. Each meal must contain a total of no less than 400 mg. calcium. This may be obtained by one serving of 8 ounces of whole, low fat, skim, buttermilk, chocolate (not chocolate drink), sweet acidophilus milk, or Ultra High Temperature (UHT) milk, fortified with vitamins A & D in an individually sealed carton, or other foods.
- (B) when the person 60 and over is receiving nutrition services.
- (B) Area Agencies on Aging shall establish written procedures that will also allow congregate nutrition programs the option to offer a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with handicaps or disabilities who have not attained 60 years of age but who reside with an eligible older adult or reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided. Disability status shall be verified by reviewing a notice of disability benefit award. Nutrition service providers shall maintain a current copy of the notice of benefit award for each person served.
- (2) Service Priority. Priority shall be given to serving:
 - (A) Individuals who have been abused, neglected, or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective services plan;
 - (B) Individuals who are at risk of abuse, neglect, or exploitation because of a decline in mental or physical functioning;
 - (C) Individuals who are health impaired and who are in need of nutritional supports, or those older persons whose independent living arrangements do not provide facilities adequate for meal preparation.
- (3) Ineligible Persons.
 - (A) Eligibility for the service is restricted to those persons whose dietary needs can be met by the meals available through the program as outlined in Rule .0512 of this Section.
 - (B) Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs including adult day care or adult day health care programs are eligible to receive congregate meals on the days they do not participate in such programs.

(b) Home Delivered Meals.

History Note: Authority G.S. 143B-181.1(c); Eff. November 1, 1993; Amended Eff. July 1, 2003.

10 NCAC 22G .0513 ELIGIBILITY FOR SERVICE

- (a) Congregate Nutrition Program.
 - (1) Target Population.
 - (A) Congregate nutrition services shall be available to persons 60 years of age and older and their spouses, regardless of age. Spouses under the age of 60 are eligible for services

- (1) Target Population.
- (A) Home delivered meals shall be available to persons 60 years of age and older who are physically or mentally unable to obtain food or prepare meals, who have no responsible person who is able and willing to perform this service, and who are unable to participate in the congregate nutrition program because of physical or mental impairment. The spouse of an eligible older person is also eligible to receive a home delivered meal if one or the other is homebound by reason of illness or incapacitating disability.
- (B) Area Agencies on Aging shall establish procedures that will allow home delivered meals programs the option to offer a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with an eligible older adult. Disability status shall be verified by reviewing a notice of disability benefit award.
- (C) Where a family caregiver is caring for an eligible homebound older person, the family caregiver is also eligible to receive a meal.
- (2) Service Priority. Priority shall be given to serving:
- (A) Individuals who have been abused, neglected, or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective service plan;
- (B) Individuals who are at risk of abuse, neglect, or exploitation because of a decline in mental or physical functioning;
- (C) Individuals who do not have a caregiver or another responsible party available to assist with care; and
- (D) Individuals who experience impairment in performance of activities of daily living (ADL) and instrumental activities of daily living (IADL) as defined in 10 NCAC 22R .0301.
- (3) Ineligible Persons. Eligibility for the service is restricted to those persons whose dietary needs can be met by home delivered meals available through the program as outlined in Rule .0512 of this Section. Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs or adult day care or adult day health care programs are eligible to receive home delivered meals on the days they do not participate in such programs.

History Note: Authority G.S. 143B-181.1(c); Eff. November 1, 1993; Amended Eff. July 1, 2003.

10 NCAC 22G .0514 ADMINISTRATION REQUIREMENTS

Agencies providing Congregate and Home Delivered Meal nutrition services shall:

- (1) Apply for authorization to accept food stamps as contributions at the nearest Field Office of the Food and Nutrition Service, USDA.
- (2) Assure that all provisions relating to the use and handling of USDA issued food stamps as prescribed by federal, state, and local agencies responsible for administering the food stamp program are met.
- (3) Maintain records documenting service activities which shall include:
 - (a) Client registration forms;
 - (b) Unit of service records;
 - (c) Service cost sharing records;
 - (d) Diet prescriptions for each therapeutic diet served;
 - (e) Meal delivery tickets if food preparation is sub-contracted or similar documentation of meals prepared, meals served, and meals unserved; and
 - (f) Employment records including equal opportunity employment goals and outcomes.
- (4) Comply with all regulations related to donated USDA food and cash reimbursement. Disbursements of cash in lieu of commodities shall only be used by grant recipients and contractors to purchase U.S. agricultural commodities and other foods for their nutritional projects.
- (5) Submit client records and units of service reports for reimbursement on a regular basis. Correct errors when they are identified.
- (6) Maintain confidentiality of all participant records.
- (7) Operate five days per week, 52 weeks per year, except for holidays designated by the county or state or during emergency situations. Participants shall be notified in writing of designated holidays.
- (8) Inform participants of agency procedures governing the provision of service, confidentiality, waiting lists, service priorities, complaints and grievances, and other matters

- germane to the participant's decision to accept service.
- (9) Congregate requirements:
- (a) Have a site director who is responsible for activities at the site;
 - (b) Make provisions necessary for the service of meals to eligible handicapped individuals with limited mobility;
 - (c) Meet all local and state fire codes and building code requirements;
 - (d) Meet all local and state sanitation codes adopted in accordance with 15A NCAC 18A .2600;
 - (e) Be located in areas as close as feasible to the majority of eligible individuals' residences;
 - (f) Update client registration information for each client at least annually;
 - (g) Develop emergency plans for each site for medical emergencies and for evacuation in case of fire or explosion. Conduct fire drills at least quarterly during hours of site operation; and
 - (h) Have a written plan which describes procedures to be followed in case a participant becomes ill or is injured. The plan shall be explained to staff, volunteers, and participants and shall be posted in at least one visible location in each nutrition site.
- (10) Home-delivered requirements:
- (a) Conduct an in-home assessment in writing within seven working days of acceptance of referral;
 - (b) Notify a participant in writing of his/her eligibility or ineligibility for home delivered meals within 10 working days of assessment;
 - (c) Conduct a written reassessment of each home-delivered meal participant every six months, except those on temporary home delivered meal status;
 - (d) Establish in writing the area to be served by the Home Delivered Meals program;
 - (e) Ensure that each home delivered meal route maintains food delivery temperatures that meet the requirements of "Rules Governing the Sanitation of Restaurants and Other Food Handling Establishments" (15A NCAC 18A .2600);
 - (f) Deliver meals only to an eligible person residing in a home setting and only when they are received by an individual; and

- (g) Establish written agency procedures for reporting changes in participant eligibility.

History Note: Authority G.S. 143B-181.1(c); Eff. November 1, 1993; Amended Eff. July 1, 2003.

10 NCAC 22G .0515 PROHIBITED ACTIVITIES

- (a) Funds shall not be used to purchase vehicles to deliver home delivered meals to participants.
- (b) Prohibited service activities:
 - (1) Medical treatment or medication shall not be provided or administered by program staff or volunteers.
 - (2) Financial transactions except those related to service cost sharing shall not be carried out by program staff or volunteers.
 - (3) Unapproved meals may not be provided to participants.
 - (4) Gifts from participants may not be accepted by program staff or volunteers.
 - (5) Meals shall not be provided to residents of long term care facilities, guests, ineligible handicapped persons under age 60, adult day care or adult day health care participants, and paid staff under age 60 without reimbursement of the full cost of the meal. Participants in adult day care or adult day health care programs are eligible for nutrition services on the days they do not attend day care or day health care programs.
 - (6) Therapeutic diets may not be served unless a physician's order is on file and the nutrition program has the capability to provide the service.
 - (7) Except on an emergency basis, nutrition site(s) shall not be closed or combined on a temporary or permanent basis without the prior written approval of the Area Agency on Aging Administrator assuring that options for maintaining services for participants have been considered.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3027; Eff. November 1, 1993; Amended Eff. July 1, 2003.

10 NCAC 26D .0116 CO-PAYMENT

- (a) Co-payment Requirements. The following requirements are imposed on all Medicaid recipients for the following services:
 - (1) Outpatient Hospital Services. Co-payment shall be charged at the rate of three dollars (\$3.00) per outpatient visit.
 - (2) Chiropractic Services. Co-payment shall be charged at the rate of one dollar (\$1.00) per chiropractic visit.
 - (3) Podiatric Services. Co-payment shall be charged at the rate of one dollar (\$1.00) per podiatric visit.

- (4) Optometric Services. Co-payment shall be charged at the rate of two dollars (\$2.00) per optometric visit.
 - (5) Optical Supplies and Services. Co-payment shall be charged at the rate of two dollars (\$2.00) per item. Co-payment for repair of eyeglasses and other optical supplies will be charged at the rate of two dollars (\$2.00) per repair exceeding five dollars (\$5.00).
 - (6) Prescribed Drugs. Co-payment shall be charged at the rate of one dollar (\$1.00) per dispensing for Generic drugs and three dollars (\$3.00) for dispensing for Brand Name drugs, including refills.
 - (7) Dental Services. Co-payment shall be charged at the rate of three dollars (\$3.00) per visit, or if more than one visit is required but the service is billed under one procedure code with one date of service, then only one co-payment shall be collected. Full and partial dentures are examples of when more than one visit is required but the service is billed under one procedure code.
 - (8) Physicians. Co-payment will be charged at the rate of three dollars (\$3.00) per visit.
- (b) Co-payment Exemptions. No co-payment shall be charged for the following services:
- (1) EPSDT related services;
 - (2) Family Planning Services;
 - (3) Services in state owned mental hospitals;
 - (4) Services covered by both Medicare and Medicaid;
 - (5) Services to persons under age 21;
 - (6) Services related to pregnancy;
 - (7) Services provided to residents of ICF, ICF-MR, SNF, Mental Hospitals; and
 - (8) Hospital emergency room services.

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); Tax Equity and Fiscal Responsibility Act of 1982, Subtitle B; Section 95 of Chapter 689, 1991 Session Laws; Eff. January 1, 1984; Temporary Amendment Eff. August 15, 1991 For a Period of 180 Days to Expire on February 15, 1992; Amended Eff. February 1, 1992; Temporary Amendment Eff. September 15, 1992 For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Amended Eff. February 1, 1993; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 26H .0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care shall be determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient shall be classified in one of the two categories depending on the services needed. Rates are derived from either filed, desk, or field audited cost reports for a base year period to be selected by the state. Rates

developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports shall be filed and audited under provisions set forth in 10 NCAC 26H .0104. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

- (1) The direct rate shall be based on the Medicaid cost per day incurred in the following cost centers:
 - (A) Nursing,
 - (B) Dietary or Food Service,
 - (C) Laundry and Linen,
 - (D) Housekeeping,
 - (E) Patient Activities,
 - (F) Social Services,
 - (G) Ancillary Services (includes several cost centers).
- (2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day shall be increased by adjustment factors for price changes as set forth in Rule .0102(c).
 - (A) A facility's direct rates shall not exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Ventilator direct rates shall be made only after review and approval of the Division of Medical Assistance.
 - (B) A standard per diem amount shall be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount shall be based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.
- (3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate shall be assigned as determined in Rule .0102(d) of this Section for the new type of care.
- (4) The direct maximum rates shall be developed by ranking base-year per diem costs from the

lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. Each array shall be weighted by total patient days. The per diem cost at the 80th percentile in each array shall be selected as the base for the maximum rate. The base cost in each array shall be adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

(5) Effective October 1, 1990, the direct rates shall be adjusted as follows:

(A) A standard per diem amount shall be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
- (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
- (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) A standard amount shall be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower

amount shall be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases shall be equal to the exact additional amount required to meet the licensed nursing requirements.

(C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which shall reflect each facility's actual cost of complying with all OBRA '87 requirements.

(6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein shall be repaid to the State. This shall be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments shall not be reimbursable.

(7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:

- (A) Administrative and General,
- (B) Operation of Plant and Maintenance,
- (C) Property Ownership and Use,
- (D) Mortgage Interest.

(8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates shall be fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that shall be paid in subsequent years under this plan as provided in this Rule.

(9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates shall be computed as follows:

(A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] shall be the base rate.

(B) The base rate shall be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates shall apply in

accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.

(C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment shall be made to recognize the additional administrative expense incurred in the provision of SNF patient care.

(10) Effective for dates of service beginning October 1, 1989, a standard per diem amount shall be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount shall be based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.

(11) Effective for dates of service beginning October 1, 1990, the indirect rate shall be standard for skilled and intermediate care for all facilities and shall be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate shall be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), shall be adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors shall be computed using aggregate base year costs in the following manner:

(1) Costs shall be separated into direct and indirect cost categories.

(2) Costs in each category shall be accumulated into the following groups:

- (A) labor,
- (B) other,
- (C) fixed.

(3) The relative weight of each cost group shall be calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).

(4) Price adjustment factors for each cost group shall be established as follows:

(A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs shall be based on the projected

average hourly wage of N.C. service workers.

(B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(C) Fixed. No adjustment shall be made for this category, thus making the factor zero.

(D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.

(E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, effective October 1, 1997 for fiscal year 1998, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall be adjusted to 2.04% for direct rates and 1% for indirect rates, in order to produce fair and reasonable reimbursement of efficient operators.

(G) Effective October 1, 2001, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall not exceed that approved by the North Carolina General Assembly.

(d) The skilled and intermediate direct patient care rates for new facilities shall be established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider shall be reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Specialized Service Rates:

(1) Head Injury Intensive Rehabilitation Services.

(A) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A

facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).

- (B) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.
 - (C) Cost reports for this service must be filed in accordance with the rules in 10 NCAC 26H .0104, but there shall be no cost settlements for any differences between cost and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider shall not be eligible to receive separate payments for return on equity as defined in 10 NCAC 26H .0105.
- (2) Ventilator Services.
- (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. Ventilator services shall be paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.
 - (B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. Rates in subsequent years shall be determined by applying the nursing facility direct adjustment factor to the previous 12 month cost report direct cost.
 - (C) Cost reports and settlements for this service shall be in accordance with 10 NCAC 26H .0104 and return on equity shall be allowed as defined in 10 NCAC 26H .0105.

- (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that shall be eligible for a combined single rate are freestanding facilities with fewer than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule.

(g) Effective October 1, 1994 the bloodborne pathogen cost required under Title 29, Part 1910, Subpart 2, Section 1910.0130 of the Code of Federal Regulations shall be included in the nursing facility's direct cost reimbursement. The initial per diem amount shall be set at the lower of the actual or eightieth percentile of bloodborne pathogen costs incurred in fiscal year 1993.

(h) Religious Dietary Considerations.

- (1) A standard amount may be added to a nursing facility's skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule, for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates are determined from a new data base. Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.
- (3) The special dietary add-on rate may not exceed more than a 30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on shall be adjusted by the direct rate inflation factor each year until a new data base is used to determine rates.
- (4) This special dietary add-on rate shall become part of the facility's direct rates to be reconciled in the annual cost report settlement.

(i) Effective October 1, 1994 nursing facilities shall provide medically necessary transportation for residents, unless ambulance transportation is needed. Reimbursement shall be included in the nursing facility's direct cost. The initial amount

shall be based on a per diem fee derived from estimated industry cost for transportation and associated salaries.

(j) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 447, Subpart C; S.L. 1991, c. 689, s. 95; Eff. January 1, 1978; Temporary Amendment Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985; Temporary Amendment Eff. October 1, 1991 for a Period of 180 Days to Expire on March 31, 1992; Amended Eff. April 1, 1992; Temporary Amendment Eff. July 1, 1992 for a Period of 180 Days to Expire on December 31, 1992; Amended Eff. May 1, 1995; February 1, 1993; January 1, 1993; Temporary Amendment Eff. January 22, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. November 9, 2001; Temporary Amendment Expired August 30, 2002; Amended Eff. April 1, 2003.

10 NCAC 26H .0401 PHYSICIAN'S FEE SCHEDULE

(a) Effective September 1, 2001, physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere shall be reimbursed based on the North Carolina Medicaid Fee Schedule which is based on 95 percent of the Medicare Fee Schedule Resource Based Relative Value System (RBRVS) in effect on the date of service, except for payments to the various Medical Faculty Practice Plans of the University of North Carolina - Chapel Hill and East Carolina University which shall be reimbursed at cost and cost settled at year end; but with the following clarifications and modifications:

- (1) A maximum fee is established for each service and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the providers customary charge to the general public for the particular service rendered.
- (2) Fees for services deemed to be associated with adequacy of access to health care services may be increased based on administrative review. The service must be essential to the health needs of the Medicaid recipients, no other comparable treatment available and a fee adjustment must be necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients.
- (3) Fees for new services are established based on this Rule, utilizing the most recent RBRVS, if applicable. If there is no relative value unit (RVU) available from Medicare, fees shall be established based on the fees for similar services. If there is no RVU or similar service, the fee shall be set at 75 percent of the provider's customary charge to the general public. For codes not covered by Medicare that Medicaid covers, annual changes in the Medicaid payments shall be applied each January 1 and fee increases shall be applied

based on the forecasted Gross National Product (GNP) Implicit Price Deflator. Said manual changes in the Medicaid payments shall not exceed the percentage increase granted by the North Carolina State Legislature.

- (4) For codes not covered by Medicare that Medicaid covers, a code may also be decreased, based on administrative review, if it is determined that the fee may exceed the Medicare allowable amount for similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is too high in relation to the skills, time, and other resources required to provide the particular service.

The Resource Based Relative Value System (RBRVS), published annually in the Federal Register, is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of nine dollars (\$9.00) for the issue containing the RBRVS values. Purchasing instructions may be received by calling 202/512-1800.

(b) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c). These changes to the Physician's Fee Schedule allowables shall become effective when the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services, approves amendment submitted to CMS by the Director of the Division of Medical Assistance as 01-18, #TN.

History Note: Authority G.S. 108A-25(b); Eff. October 1, 1982; Amended Eff. July 1, 1997; July 1, 1995; January 4, 1993; June 1, 1990; December 1, 1988; Temporary Amendment Eff. July 22, 1998; January 22, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2000 (This temporary amendment amends and replaces a permanent rulemaking originally proposed to be effective August 2000); Amended Eff. March 19, 2001; Temporary Amendment Eff. September 10, 2001; Temporary Amendment Expired June 28, 2002; Amended Eff. April 1, 2003.

10 NCAC 26H .0502 CLINIC SERVICES

(a) Payments for clinic services shall be based on negotiated fee, not to exceed reasonable cost:

- (1) For services provided by or through the memorandum of understanding between the Division of Medical Assistance and the Division of Public Health, a supplemental payment shall be made between September 20, 1995 and September 30, 1995, in an amount which represents the difference between the estimated cost of services for the 12-month period ending September 30, 1995, and the estimate of payments made by the Division of Medical Assistance for these services. The

amount of the supplement payment shall be set by the Director of the Division of Medical Assistance and will not exceed fifteen million dollars (\$15,000,000). Effective with dates of services for the fiscal period beginning October 1, 1995, and for subsequent periods beginning October 1 an interim payment for services shall be made by the Division of Medical Assistance.

- (2) To assure payments do not exceed the upper payment limits set forth at 42 CFR 447.321, the payments made by this Paragraph shall be cost settled on a statewide average per service to determine the difference between the reasonable cost of services provided as determined by the Division of Medical Assistance and the amount of payment made for the services for each fiscal period corresponding to the payment periods specified. Cost settlements for the September 30, 1995, and September 30, 1996, fiscal period shall occur within six months after the approval date of the initial state plan amendment. Subsequent fiscal periods shall be cost settled within six months of the end of each fiscal period.

(b) This cost methodology does not apply to the reimbursement of services that are billed by health departments for physicians, nurse midwives, and nurse practitioners who are not salaried employees of a health department and whose compensation is not included in the service cost of a health department. These services are reimbursed in accordance with the fees established in 10 NCAC 26H .0401 and 10 NCAC 26H .0404.

(c) Effective October 1, 2001 the cost settlement period shall be the 12 months ended June 30. The first settlement period after the change shall be short period from October 1, 2001 to June 30, 2002. Subsequent cost settlement periods shall be the 12 months ended June 30.

(d) Effective July 1, 2001, the cost settlement shall occur within nine months of the end of the settlement period.

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86;

Eff. February 1, 1984;

Temporary Amendment Eff. November 9, 2001;

Temporary Amendment Expired August 30, 2002;

Amended Eff. April 1, 2003.

10 NCAC 26H .0602 REIMBURSEMENT METHODS

(a) A maximum rate per visit shall be established annually for each of the following services:

- (1) Registered or Licensed Practical Nursing Visit;
- (2) Physical Therapy Visit;
- (3) Speech Therapy Visit;
- (4) Occupational Therapy Visit;
- (5) Home Health Aide Visit.

(b) The maximum rates for the services identified in Paragraph (a) of this Rule are computed and applied as follows:

- (1) Payment of claims for visits shall be based on the lower of the billed customary charges or

the maximum rate of the particular service. Governmental providers with nominal charges may bill at cost. For this purpose, a charge that is less than 50 percent of cost is considered a nominal charge. For such governmental providers, the payment amount is equal to the lower of the cost as billed or the applicable maximum rate.

- (2) Maximum per visit rates effective July 1, 1996, for Registered or Licensed Practical Nursing, Physical Therapy, Speech Therapy, and Occupational Therapy shall be equal to the rates in effect on July 1, 1995. The July 1, 1995 maximum rates are as follows: Registered or Licensed Practical Nursing (\$82.78), Physical Therapy (\$81.59), Speech Therapy (\$81.59) and Occupational Therapy (\$81.59). To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, the maximum rates per visit are adjusted as described in Subparagraphs (4), (5), and (6) of this Paragraph.

- (3) Maximum per visit rate effective July 1, 1996 for Home Health Aide shall be equal to the rate in effect on July 1, 1995. To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, perform the following steps:

- (A) Sort all providers by the cost per visit using the 1994 cost reports (low to high),
- (B) Run a cumulative total on visits from each provider based on the sorting,
- (C) When the cumulative total number of visits reaches the fiftieth percentile, the cost per visit rate associated with that provider shall be adjusted as described in Subparagraphs (4), (5), and (6) of this Paragraph.

- (4) Each year maximum rates shall be adjusted by an annual cost index factor. The cost index has a labor component with a relative weight of 75 percent and a non-labor component with a relative weight of 25 percent. The relative weights shall be derived from the Medicare Home Health Agency Input Price Index published in the Federal Register dated May 30, 1986. Labor cost changes shall be measured by the annual percentage change in the average hourly earnings of North Carolina service wages per worker. Non-labor cost changes are measured by the annual percentage change in the GNP Implicit Price Deflator.

- (5) The annual cost index shall equal the sum of the products of multiplying the forecasted labor cost percentage change by 75 percent and multiplying the forecasted non-labor cost percentage change by 25 percent. For services included under Subparagraph (2) of this Paragraph, the July 1, 1996 effective rates

shall be multiplied by the cost index factor for each subsequent year up to the year in which the rates apply. For services included under Subparagraph (3) of this Paragraph, base year costs per visit shall be multiplied by the cost index factor for each subsequent year up to the year in which rates apply. The annual cost index factor shall not exceed the amount approved by the North Carolina General Assembly.

(6) Other adjustments may be necessary for home health services to comply with federal or state laws or rules.

(c) Medical supplies except those related to provision and use of Durable Medical Equipment shall be reimbursed at the lower of a provider's billed customary charges or a maximum amount determined for each supply item. Fees shall be established based on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. Estimates of reasonable cost shall be used if a Medicare allowable amount cannot be obtained for a particular supply or equipment item. The Medicare allowable amounts shall be those amounts available to the Division of Medical Assistance as of July 1 of each year.

(d) Changes to the Payment for Services Prospective Reimbursement Plan for Home Health Agencies shall become effective when the Centers for Medicare and Medicaid Services (CMS), US Department Health and Human Services, approves amendment submitted to CMS by the Director of the Division of Medical Assistance as TN#01-16.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c.479, s. 86; 42 C.F.R. 440.70; Eff. October 1, 1987; Amended Eff. October 1, 1992; May 1, 1990; Temporary Amendment Eff. October 4, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 25, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. November 9, 2001; Temporary Amendment Expired August 30, 2002; Amended Eff. April 1, 2003.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 06A .0302 EXAMINATIONS – SPECIAL ACCOMMODATIONS (ADA)

An individual with a physical disability may have special assistance from other individuals acting as readers or recorders. Applicants requiring special assistance shall request the assistance from the test administrator before registration for the examination. Verification of handicaps and a statement of all assistance needed shall be included at the time of application.

History Note: Authority G.S. 58-2-40; 58-33-30(e); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. February 1, 1996; February 1, 1989; Amended Eff. April 1, 2003.

11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

(a) The definitions in G.S. 58-33-10 are incorporated into this Rule by reference.

(b) An agent licensed to sell life and health insurance may sell variable contracts provided the agent is licensed to sell securities through the Secretary of State, holds a current NASD registration, (series 6 or 7 and 63) and is appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company shall verify that the agent has met the NASD requirement.

(c) A limited representative shall be licensed with each company for which he will solicit business.

(d) Responsibility of insurance companies for forms:

- (1) Companies shall make application for limited representatives and adjusters to be licensed.
- (2) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (3) Companies shall have on file with the Division the name of the individual responsible for all agent appointments, termination of agent appointments and agent license applications submitted by the company to the Division.
- (4) A company shall verify the licensure of an agent before the company appoints the agent.

(e) Responsibility of the agent:

- (1) An applicant who must take the examination shall comply with Section .0300 of this Subchapter.
- (2) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.
- (3) Any licensee licensed under Chapter 58, Article 33 of the North Carolina General Statutes shall notify the Division in writing of any change of residence or business address within 10 days after the change.
- (4) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand.

(f) An applicant for a resident license shall, if applicable, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance shall be valid for no more than 90 days from date of issuance.

History Note: Authority G.S. 58-2-40; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66; Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. April 1, 2003; February 1, 1996; October 1, 1990; February 1, 1989.

11 NCAC 06A .0413 LICENSING OF BUSINESS ENTITIES

- (a) As used in this Rule, "business entity" has the same meaning as in G.S. 58-33-10(4).
- (b) A business entity may submit application forms with a company check, certified check, cashier's check or money order.
- (c) A business entity registered with the North Carolina Secretary of State applying for the first time shall provide the Division with proof of its business entity status by submitting a copy of the appropriate document issued and certified by the Secretary of State.
- (d) A business entity shall file with the Division a list of all insurance companies with which it contracts along with the names and social security numbers of the agents representing each company.
- (e) A business entity shall notify the Division of the addition or deletion of an agent or insurance company within 30 days after the change.

History Note: Authority G.S. 58-2-40; 58-33-31; Eff. February 1, 1989; Amended Eff. April 1, 2003; February 1, 1996; October 1, 1990.

11 NCAC 06A .0602 COURT RECORDS AND AFFIDAVITS REQUIRED

An individual who has been convicted of an offense specified in G.S. 58-33-46(a)(6), shall submit to the Division the following information with the application for licensure and examination:

- (1) a copy of the entire court record including the judgment, as well as a complete criminal history check;
- (2) a copy of unconditional release or unconditional discharge from the Post Release Supervision and Parole Commission, if applicable, on the forms provided by the North Carolina Department of Correction;
- (3) if the applicant or licensee is currently employed or expects to be employed by an insurer, agency, company or firm in the business of insurance, the applicant or licensee shall submit a letter from the employer or potential employer stating that the applicant or licensee has disclosed to the employer information about the conviction;
- (4) a notarized affidavit from the applicant about the conviction; and
- (5) if applicable, a statement from the applicant's probation officer.

History Note: Authority G.S. 58-2-40; 58-33-46(6); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. April 1, 2003; October 1, 1990; April 1, 1989; July 1, 1986.

11 NCAC 06A .0702 PRELICENSING EDUCATION SCHOOLS

(a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by G.S. 58-33-30. All schools desiring to conduct a prelicensing course

shall be approved by the Commissioner before commencement of the courses.

(b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner.

- (c) The Division shall approve a school when:
 - (1) the school has submitted all information required by the Rules in this Section;
 - (2) the course to be conducted complies with 11 NCAC 06A .0704;
 - (3) the program director has been approved by the Commissioner in accordance with 11 NCAC 6A .0703;
 - (4) the school has an approved instructor to teach each kind of insurance for which they are seeking approval; and
 - (5) a school requesting approval to operate as a correspondence school has and maintains an approved active classroom schedule.

(d) The Commissioner shall deny, revoke, suspend, or terminate approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of 11 NCAC 06A .0702, .0703, .0704, or .0705; or
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (3) the school's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates; or
- (4) the school has not conducted at least one prelicensing course during any 12-month period; or
- (5) the school has refused or failed to submit information or properly completed forms prescribed by the Commissioner.

(e) In all proceedings to deny, revoke, suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.

(f) When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration.

(g) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one prelicensing course during any 12-month period, that school may reapply after one year of suspension. At such time, the Commissioner shall give the school six months to conduct at least one prelicensing course.

(h) The following requirements shall apply for changes during any approved year:

- (1) A school shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change. Notification of such changes shall be in writing.
- (2) An approved school that intends to terminate its prelicensing program, other than during the annual renewal period, shall notify the Commissioner in writing.
- (3) A school shall notify the Commissioner in writing of a change of textbook.

(i) An approved school may use, for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the State;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and
- (3) be reviewed and approved by the Commissioner in writing before publication.

(j) A classroom school's facilities and equipment shall have been found by appropriate local code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.

(k) The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.

(l) A school shall publish and provide to all prelicensing students before enrollment a publication of that school that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs; and
- (4) an outline or description of all prelicensing courses offered.

(m) With the exception of correspondence courses, a school shall file with the Commissioner information giving exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information may be submitted either at the beginning of each quarter or semester or no later than one week before the first class meeting of each prelicensing course.

(n) Classroom schools shall retain the following material on file at one location for at least three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student names, with social security numbers, for each course, and the name of the Instructor; and
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

(o) Correspondence schools shall retain the following material on file at one location for at least three years:

- (1) advertisements;
- (2) bulletins, catalogues and other official publications;
- (3) grade reports;
- (4) a list of student names, with social security numbers, for each course, and the name of the instructor; and
- (5) student registration information that must be obtained prior to the distribution of course material.

All files shall be made available to the Commissioner upon request.

(p) In the event of illness, injury or death of an instructor, the program director may use a non-approved instructor to complete a course. The school shall thereafter suspend operation of that prelicensing course until an approved instructor is available.

History Note: Authority G.S. 58-2-40; 58-33-30(d); 58-33-130; 58-33-132; Eff. February 1, 1989; Amended Eff. April 1, 2003; April 1, 1996; November 1, 1990.

11 NCAC 12 .0328 ELIGIBLE INDIVIDUAL COVERAGE

(a) As used in this Rule, "designated health plan" means a guaranteed available plan an insurer must issue to an eligible individual under G.S. 58-68-60.

(b) As used in this Rule, "eligible individual" has the same meaning as in G.S. 58-68-60(b).

(c) As used in this Rule, "insurer" means an entity licensed under G.S. Chapter 58 that offers health insurance coverage in the individual market in this State.

(d) An insurer shall market each of its designated health plan(s) to eligible individuals.

(e) In marketing the designated health plan(s) to eligible individuals, an insurer shall use at least the same sources and methods of distribution that it uses to market other health benefit plans to individuals. An agent authorized by an insurer to market health benefit plans to individuals in this State shall also be authorized to market to eligible individuals.

(f) An insurer shall offer at least the designated health plan(s) to any eligible individual who applies for or makes an inquiry regarding health insurance coverage from the insurer. The offer may be provided directly to the eligible individual or delivered through an agent. The offer shall be in writing and shall include at least the following information:

- (1) A general description of the benefits contained in the designated health plan(s) and any other health benefit plan being offered to the eligible individual; and
- (2) Information describing how the eligible individual may enroll in the plans.

(g) An insurer shall provide a price quote to an eligible individual (directly or through an authorized agent) within 10 working days of receiving a request for a quote and information necessary to provide the quote. An insurer shall notify an eligible individual within five working days of receiving a request for a quote of any additional information needed by the insurer to provide the quote.

(h) An insurer shall not apply more stringent or detailed requirements related to the application process for an eligible individual than are applied for other individual applicants for other health benefit plans offered by the insurer.

(i) If an insurer denies coverage under a health benefit plan to an eligible individual, the denial shall be in writing and shall state with specificity the reasons for the denial, subject to any restrictions related to confidentiality of medical information. The written denial shall be accompanied by a written explanation of the guaranteed availability of coverage under the designated health plan(s) from the insurer. The explanation shall include at least the following:

- (1) A general description of the benefit contained in each designated health plan;
- (2) A price quote for each designated health plan; and
- (3) Information describing how the eligible individual may enroll in a designated health plan.

(j) The written information described in Paragraph (i) of this Rule shall be provided within the time periods provided in Paragraph (g) of this Rule and may be provided directly to the eligible individual or delivered through an authorized agent.

(k) An insurer shall maintain a toll-free telephone service that answers its telephone calls in a timely manner to provide information to eligible individuals about the availability of the designated health plan(s) in this State. The service shall provide information to callers on how to apply for designated health plan coverage from the insurer. The information may include the names and telephone numbers of agents located near to the caller or other information designed to assist the caller to locate an authorized agent or to otherwise apply for coverage.

(l) An insurer shall not require, as a condition to the offer or sale of a designated health plan to an eligible individual, that the eligible individual purchase or qualify for any other insurance product or service.

(m) An insurer shall not create financial incentives or disincentives for agents to sell or to not sell any of its individual health benefit plans, including designated health plans.

History Note: Authority G.S. 58-2-40(1); 58-68-60; Eff. April 1, 2003.

11 NCAC 12 .0601 PURPOSE AND SCOPE

The purpose of the rules in this Section are:

- (1) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
- (2) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions that will:
 - (a) assure that purchasers receive information with which a decision can be made in their own best interest;
 - (b) reduce the opportunity for misrepresentation and incomplete disclosures; and

(c) establish penalties for failure to comply with requirements of the rules in this Section.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003.

11 NCAC 12 .0603 OTHER DEFINITIONS

(a) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(b) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement" in 11 NCAC 12 .0602.

(c) "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(d) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it shall be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in 11 NCAC 12.0606.

(e) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in 11 NCAC 4.0501(b)(8).

(f) "Policy summary," for purposes of the rules in this Section;

- (1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:
 - (A) current death benefit;
 - (B) annual contract premium;
 - (C) current cash surrender value;
 - (D) current dividend;
 - (E) application of current dividend; and
 - (F) amount of outstanding loan.
- (2) For universal life policies, means a written statement that shall contain at least the following information:
 - (A) the beginning and end date of the current report period;
 - (B) the policy value at the end of the previous report period and at the end of the current report period;

- (C) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
- (D) the current death benefit at the end of the current report period on each life covered by the policy;
- (E) the net cash surrender value of the policy as of the end of the current report period; and
- (F) and the amount of outstanding loans, if any, as of the end of the current report period.

(g) "Producer," for purposes of the rules in this Section, shall include agents, brokers and producers.

(h) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(i) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(j) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003.

11 NCAC 12 .0604 EXEMPTIONS

(a) Unless the statutes state otherwise, this Section shall not apply to transactions involving:

- (1) Credit life insurance;
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 11 NCAC 12 .0608;
- (3) Group life insurance and annuities used to fund prearranged funeral contracts;
- (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner;

- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (6) Policies or contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - (C) A governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from 11 NCAC 12 .0601; or
- (10) Structured settlements.

(b) Notwithstanding 11 NCAC 12 .0604(6), the rules in this Section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.

(c) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0607 with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985;

Amended Eff. April 1, 2003; April 8, 2002; November 1, 1989.

11 NCAC 12 .0605 DUTIES OF PRODUCERS

(a) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(b) If the applicant answered "yes" to the question regarding existing coverage referred to in Paragraph (a) of this Rule, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in 11 NCAC 12 .0611 or other form approved by the Commissioner as substantially similar to the form described in 11 NCAC 12 .0611. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.

(c) The notice shall list all life insurance policies or annuities proposed to be replaced, identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(d) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(e) Except as provided in 11 NCAC 12 .0612(c), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003; October 1, 1989.

11 NCAC 12 .0606 DUTIES OF THE EXISTING INSURER

Where a replacement is involved in the transaction, the existing insurer shall:

- (1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.

- (2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration. If an in force illustration cannot be produced within five business days after receipt of a notice that an existing policy or contract is being replaced, the insurer shall provide a policy summary. The information shall be provided within five business days after receipt of the request from the policy or contract owner.

- (3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. When consecutive automatic premium loans are made, the insurer is only required to send the notice at the time of the first loan.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003.

11 NCAC 12 .0607 DUTIES OF INSURERS THAT USE PRODUCERS

Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of the rules in this Section that shall include the following:
 - (a) Information to its producers of the requirements of the rules in this Section and incorporation of the requirements of the Rules in this Section into all relevant producer training manuals prepared by the insurer;
 - (b) Provision to each producer of a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
 - (c) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subitem (1)(b) of this Rule.
 - (d) Procedures to confirm that the requirements of the rules in this Section have been met; and
 - (e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer,

- but that have not been reported as such by the applicant or producer.
- Compliance with this Item may include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Department. The capacity to monitor shall include the ability to produce records for each producer's:
- (a) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (b) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (c) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
 - (d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subitem (1)(e) of this Rule; and
 - (e) Replacements, indexed by replacing producer and existing insurer;
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
- (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements as contained in 11 NCAC 12 .0611;
- (5) When the applicant has existing policies or contracts, be able to produce copies of any sales material required by 11 NCAC 12 .0605(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) Ascertain that the sales material and illustrations required by 11 NCAC 12 .0605(e) meet the requirements of the rules in this Section and are complete and accurate for the proposed policy or contract;
- (7) If an application does not meet the requirements of the rules in this Section, notify

- the producer and applicant and fulfill the outstanding requirements; and
- (8) Maintain records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003; November 1, 1989.

11 NCAC 12 .0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES

- (a) When an insurer receives an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement as set out in 11 NCAC 12 .0611(2), or other form approved by the Commissioner as substantially similar to the form described in 11 NCAC 12 .0611(2).
- (b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

- (1) provide to applicants or prospective applicants with the policy or contract a notice, as described in 11 NCAC 12 .0611(3), or other form approved by the Commissioner as substantially similar to the form described in 11 NCAC 12 .0611(3). The insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the Commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this Paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
- (2) comply with the requirements of 11 NCAC 12 .0612(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of 11 NCAC 12 .0612(a)(3), 11 NCAC 12 .0612(a)(4), and 11 NCAC 12 .0612(b).

History Note: Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 1, 2003; October 1, 1989.

11 NCAC 12 .0609 VIOLATIONS AND PENALTIES

(a) Any failure to comply with the rules in this Section shall be considered a violation of G.S. 58-63-15. Violations include:

- (1) Any deceptive or misleading information set forth in sales material;
- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;
- (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
- (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(b) Policy and contract owners may replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate the rules in this Section.

(c) Where it is determined that the requirements of the rules in this Section have not been met, the replacing insurer shall provide to the policy owner:

- (1) Either:
 - (A) An in force illustration if available; or
 - (B) A policy summary for the replacement policy; or
 - (C) An available disclosure document for the replacement contract; and
- (2) The appropriate notice regarding replacements in 11 NCAC 12 .0611(1) or 11 NCAC 12 .0611(3).

(d) Violations of the rules in this Section shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the Commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and payment of monetary penalties pursuant to G.S. 58-2-75.

History Note: Authority G.S.; 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40; 58-63-65; Eff. October 1, 1985; Amended Eff. April 1, 2003; October 1, 1989.

11 NCAC 12 .0612 DUTIES OF REPLACING INSURERS THAT USE PRODUCERS

(a) Where a replacement is involved in a transaction, the replacing insurer shall:

- (1) Verify that the required forms are received and are in compliance with the rules in this Section.
 - (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;
 - (3) Be able to produce copies of the notification regarding replacement required in 11 NCAC 12 .0605(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
 - (4) Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in the notice required by 11 NCAC 12 .0611(1) or 11 NCAC 12 .0611(3).
- (b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.
- (c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to 11 NCAC 12 .0605(e), the insurer may:
- (1) Require with each application a statement signed by the producer that:
 - (A) Represents that the producer used only company-approved sales material; and
 - (B) States that copies of all sales material were left with the applicant in accordance with 11 NCAC 12 .0605(d); and
 - (2) Within 10 days of the issuance of the policy or contract:
 - (A) Notify the applicant by sending a letter or by verbal communication

with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with 11 NCAC 12 .0605(d);

- (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
- (C) Stress the importance of retaining copies of the sales material for future reference.

(d) An insurer shall retain and be able to produce a copy of the letter or other verification referenced in Subitem (2)(A) of Paragraph (c) of this Rule in the policy or contract file for at least five years after the termination or expiration of the policy or contract.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40; Eff. April 1, 2003;

TITLE 13 - DEPARTMENT OF LABOR

13 NCAC 07F .0501 SHIPYARD EMPLOYMENT

(a) The provisions for the Occupational Safety and Health Standards for Shipyard Employment, Title 29 of the Code of Federal Regulations Part 1915 promulgated as of July 3, 2002, and exclusive of subsequent amendments, are incorporated by reference.

(b) The provisions of 29 CFR 1915 shall apply only to public sector employees of local governments or of the State of North Carolina.

History Note: Authority G.S. 95-131; 150B-21.6; Eff. December 1, 1993; Amended Eff. July 1, 2003; February 22, 1999; October 8, 1998; July 1, 1998; October 15, 1997; March 7, 1997; February 11, 1997; September 1, 1996; January 1, 1996; September 6, 1995; May 1, 1995; February 1, 1995.

13 NCAC 07F .0502 MARINE TERMINALS

(a) The provisions of the Occupational Safety and Health Regulations for Marine Terminals, Title 29 of the Code of Federal Regulations Part 1917, promulgated as of June 30, 2000, and exclusive of subsequent amendments are incorporated by reference.

(b) The provisions of 29 CFR 1917 shall apply only to public sector employees of local governments or of the State of North Carolina.

History Note: Authority G.S. 95-131; 150B-21.6; Eff. December 1, 1993; Amended Eff. July 1, 2003; December 7, 2000; February 22, 1999; July 1, 1998; October 15, 1997; November 1, 1994; August 1, 1994.

13 NCAC 15 .0430 REGULATION OF INFLATABLE

OR AIR-SUPPORTED AMUSEMENT DEVICES

13 NCAC 15 .0430 through 13 NCAC 15 .0438 set forth the standards that must be met for the operation of inflatable or air-supported amusement devices located in amusement parks or carnival areas in this State. In addition, the owner or operator of any inflatable or air-supported amusement device located in amusement parks or carnival areas shall comply with G.S. 95, Article 14B and Title 13, Chapter 15 of the North Carolina Administrative Code.

History Note: Authority G.S. 95-111.1; 95-111.2; 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0431 DEFINITIONS

For purposes of Rules .0430 through .0438 of this Chapter, Inflatable or Air-Supported Amusement Device is defined as an air-filled structure designed to allow riders to bounce, slide or climb on it. Such a device is made from flexible fabric, kept inflated by one or more blowers, and relies on air pressure to maintain its shape.

History Note: Authority G.S. 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0433 ANCHORAGE OR TIE-DOWN

(a) All inflatable or air-supported amusement devices shall be anchored according to the manufacturer's specifications.

(b) The number and location of tie-downs shall be in accordance with the manufacturer's specifications.

(c) Non-load bearing positioning loops shall not be used as tie-downs or anchor points.

(d) All anchor ropes, tethers and tie-down ropes shall be attached to permanent structures, stakes, or be anchored by an on-ground anchor weight. Anchor ropes, tethers and tie-down ropes and anchors shall not be attached to motor vehicles.

(e) Ground stakes, except as otherwise specified by the manufacturer, shall meet the following requirements:

- (1) All ground stakes shall be a at least 40 inches in length, with at least 10 inches exposed above ground when used;
- (2) All ground stakes shall be equipped with a restraining hook, collar, or other similar device, in order to prevent the attached ropes from sliding up and being released; and
- (3) All ground stakes shall be protected or covered to prevent tripping or other accidental contact.

(f) On-Ground anchor weights shall meet the following requirements:

- (1) For bounce-type inflatable or air-supported amusement devices, the on-ground anchor weights shall be at least 75 pounds for each manufacturer-recommended anchor position, or the amount recommended by the manufacturer; and
- (2) For slide-type inflatable or air-supported amusement devices, the on-ground anchor weights shall be at least 500 pounds for each manufacturer-recommended anchor position, or the amount recommended by the manufacturer.

(g) All anchor ropes, tethers and tie-down ropes shall have a tensile strength of at least 3700 pounds or 370-pound test rated, or the amount recommended by the manufacturer.

History Note: Authority G.S. 95-111.2; 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0434 OPERATION OF INFLATABLE OR AIR-SUPPORTED AMUSEMENT DEVICES

(a) All inflatable or air-supported amusement devices shall have at least one operator on duty any time the device is inflated. If the operator cannot see the entire device from entrance to exit, an additional operator shall be placed in a position to observe the exit area of the device.

(b) Unless otherwise specified by the manufacturer, all inflatable or air-supported slides 20 feet or higher shall have at least two operators, one of whom shall be located at the top of the slide and one of whom shall be located at the bottom of the slide.

(c) The operator shall assist the riders while they enter and exit the device.

(d) The operator shall not exceed the manufacturer's requirements for maximum loads or rated capacities for individual devices.

(e) The operator shall ensure that children are not in danger of injury from adults using the device at the same time.

(f) The operator(s) shall be located in close proximity to the entrance and exit of the device, and shall supervise the riders at all times.

(g) The operator shall remove from the device any rider who is acting in a manner that may endanger the safety of other riders.

History Note: Authority G.S. 95-111.2; 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0435 BLOWERS

(a) All inflatable or air-supported amusement devices shall be equipped with blowers that meet the manufacturers specifications for the size and type of device.

(b) If a power failure or other emergency occurs which disables the blowers, provision shall be made to keep the inflatable or air-supported amusement device erect for at least five minutes or the time required to evacuate the manufacturer's rated capacity, whichever is longer. This may be accomplished by ensuring that the device is equipped with a sealed chamber or non-return valve that prevents the rapid collapse of ceilings and walls.

(c) Blowers shall be protected or guarded in order to prevent riders from coming into contact with them.

History Note: Authority G.S. 95-111.2; 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0436 WIND SPEED

(a) No person shall operate an inflatable or air-supported amusement device when the sustained wind speed exceeds the manufacturer's recommendation.

(b) All inflatable or air-supported amusement devices shall be immediately unloaded and deflated when the sustained wind speed exceeds 25 m.p.h.

History Note: Authority G.S. 95-111.2; 95-111.4;

Eff. July 1, 2003.

13 NCAC 15 .0437 SIGNS

The operator shall ensure that signs are displayed at the entrance of each inflatable or air-supported amusement device that contain the following:

- (1) A statement that all riders must remove their shoes prior to entering the device;
- (2) A statement that all riders must remove all loose or sharp objects from their person prior to entering the device; and
- (3) A statement that the operator shall assist the riders when they enter and exit the ride.

History Note: Authority G.S. 95-111.4; Eff. July 1, 2003.

13 NCAC 15 .0438 OPERATING MANUAL AND DOCUMENTATION

(a) The owner shall maintain the manufacturer's operating manual for each inflatable or air-supported amusement device.

(b) The owner shall maintain a training manual that contains a complete description of the training program required for operators of each device. The training manual shall include the following:

- (1) the proper method of operating the device;
- (2) how to ensure the safe entry and exit of riders;
- (3) safe methods of assembling and dismantling the device, where applicable;
- (4) how to conduct daily inspections;
- (5) how to anchor the device;
- (6) measures to be taken in the event of a power failure or other emergency; and
- (7) procedures for reporting accidents, defects or breakdowns.

(c) The operator and each member of the operating staff shall have knowledge of the operating manual and the training manual.

(d) A copy of the operating manual and the training manual shall be maintained on site, and shall be provided to representatives of the Department upon request.

(e) In the case of a rental, the owner shall ensure that the renter receives and understands the device operating procedures (including the operating manual and the training manual), and the rules and regulations pertaining to the operation of the device rented.

History Note: Authority G.S. 95-111.2; 95-111.4; Eff. July 1, 2003.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 01C .0106 SCOPING AND HEARINGS

DENR agencies shall utilize scoping and hearing processes in their NCEPA activities to the extent appropriate to the complexity, potential for environmental effects, and level of expressed interest associated with the proposed activity. Scoping and hearing processes are public processes designed to determine the types of environmental issues to be addressed in

environmental documents. They are open processes intended to obtain the view of other agencies and the public in order for state agencies to make informed decisions.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10; Eff. July 1, 2003.

15A NCAC 01C .0306 ACTIVITIES OF A SPECIAL NATURE

Any activity falling within the parameters of the minimum criteria set out in Section .0400 of this Subchapter shall not routinely be required to have environmental documentation under the NCEPA. However, an environmental document is required when the Secretary determines that:

- (1) the proposed activity may have a potential for significant adverse effects on wetlands; surface waters such as rivers, streams and estuaries; parklands; game lands; prime agricultural or forest lands; or areas of local, state or federally recognized scenic, recreational, archaeological, ecological, scientific research or historical value, including secondary impacts; or would threaten a species identified on the Department of Interior's or the state's threatened and endangered species lists; or
- (2) the proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, instream flow, air quality, or ground water impacts; or affect long-term recreational benefits, fish, wildlife, or their natural habitats; or
- (3) the proposed activity has secondary impacts, or is part of cumulative impacts, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment; or
- (4) the proposed activity is of such an unusual nature or has such widespread implications that a concern for its environmental effects has been identified by the DENR agency or expressed to the DENR agency.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0406 SAMPLING, SURVEY, MONITORING, AND RELATED RESEARCH ACTIVITIES

Sampling, survey, monitoring and research activities do not require the filing of environmental documentation. These activities include, but are not limited to the following:

- (1) Aerial photography projects involving the photographing or mapping of the lands of the state;
- (2) Biology sampling and monitoring of:

- (a) Fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone; and
- (b) Wildlife resources through the use of traditional techniques, including but not limited to traps, drugs, and firearms;
- (3) Soil survey projects involving the sampling or mapping of the soils of the state;
- (4) Establishing stream gaging stations for the purpose of measuring water flow at a particular site;
- (5) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality;
- (6) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.
- (7) Placement and use of geodetic survey control points;
- (8) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment which do not have adverse effects; and
- (9) Investigation and assessment of sites contaminated with regulated substances.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 02B .0234 NEUSE RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source discharges in the Neuse River Basin in order to maintain or restore the water quality in the Neuse River Estuary and protect its designated uses.
- (2) Applicability. This Rule applies to all wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits.
- (3) Definitions. For the purposes of this Rule, the following definitions apply:
 - (a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:
 - (i) "Existing" means that which obtained a NPDES permit on or before December 31, 1995.
 - (ii) "Expanding" means that which increases beyond its

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	permitted flow as defined in this Rule.	Kenly	NC0064891	0.63
		Snow Hill	NC0020842	0.50
(iii)	"New" means that which had not obtained a NPDES permit on or before December 31, 1995.	Wilson	NC0023906	14.00

- (b) "MGD" means million gallons per day.
 - (c) "Nitrogen wasteload allocation" is that portion of the Neuse River nitrogen TMDL assigned to individually permitted wastewater facilities in the basin and represents the maximum allowable load of total nitrogen to the estuary from these point source dischargers.
 - (d) "Nitrogen estuary allocation" or "estuary allocation" means the mass loading of total nitrogen at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge allocation multiplied by its assigned transport factor.
 - (e) "Nitrogen discharge allocation" or "discharge allocation" means the mass loading of total nitrogen at the point(s) of discharge that is reserved for a discharger or group of dischargers. A discharger's or group's discharge allocation is equivalent to its estuary allocation divided by its assigned transport factor.
 - (f) "Nitrogen TMDL," or "TMDL," means the total nitrogen load to the Neuse River estuary that is predicted to maintain adequate water quality to support all designated uses in the estuary and is approved by the United States Environmental Protection Agency in accordance with the federal Clean Water Act.
 - (g) "Nonpoint source load allocation" is that portion of the Neuse River nitrogen TMDL assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen to the estuary from these nonpoint sources.
 - (h) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:
 - (i) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen.
 - (j) "Transport factor" is the fraction of the total nitrogen in a discharge that is predicted to reach the estuary.
- (4) This Item specifies the nitrogen wasteload allocation for point sources.
- (a) Beginning with the calendar year 2003, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year plus any portion of the nonpoint source load allocation purchased in accordance with the provisions in Items (7) and (8) of this Rule and 15A NCAC 02B .0240.
 - (b) The Commission shall order future revisions in the nitrogen wasteload allocation whenever necessary to ensure that water quality in the estuary meets all standards in 15A NCAC 02B .0200 or to conform with applicable state or federal requirements.
- (5) This Item specifies nitrogen discharge allocations for point sources.
- (a) Upon adoption of this Rule and until revised as provided elsewhere in this Rule, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
 - (i) Dischargers with permitted flows less than 0.5 MGD shall be assigned collectively an annual discharge allocation of 138,000 pounds of total nitrogen.
 - (ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 443,700 pounds of total nitrogen.
 - (iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation

<u>Facility Name</u>	<u>NPDES No.</u>	<u>Permitted Flow (MGD)</u>
Benson	NC0020389	3.00
Goldsboro	NC0023949	16.80

- maximum monthly average flow limit in the facility's NPDES permit.
- (e) The nitrogen discharge allocation for a new facility treating industrial wastewaters shall not exceed the mass equivalent of either the best available technology economically achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's NPDES permit, whichever is less.
 - (f) New dischargers must meet a monthly average total phosphorous limit of 1 mg/L.
 - (g) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (8) This Item specifies nutrient controls for expanding facilities.
- (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.
 - (b) Facilities submitting an application for increased discharge shall make every reasonable effort to minimize increases in their nitrogen discharges, such as reducing sources of nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; or to obtain estuary allocation from existing dischargers.
 - (c) No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.
 - (d) If these measures do not produce adequate estuary allocation for the expanded flows, facilities may purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance.
 - (e) The nitrogen discharge allocation for an expanded facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the NPDES permit, or its existing allocation, whichever is greater.
- (f) The nitrogen discharge allocation for expanding facilities of an industrial nature shall not exceed the mass equivalent to the best available technology economically achievable or a concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's modified NPDES permit, whichever is less. If the resulting mass is less than the facility's existing discharge allocation, the existing discharge allocation shall not be reduced.
 - (g) Expanding facilities must meet a monthly average total phosphorous limit of 1 mg/L unless they are a member in good standing of a group compliance association described in Item (9) of this Rule, in which case they must meet a quarterly average total phosphorous limit of 2 mg/L.
 - (h) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (9) This Item describes the option for dischargers to join a group compliance association to collectively meet nutrient load allocations.
- (a) Any or all facilities within the basin may form a group compliance association to meet nitrogen estuary allocations collectively. Any such association must apply for and shall be subject to an NPDES permit that establishes the effective total nitrogen allocations for the association and for its members. More than one group compliance association may be established. No facility may belong to more than one association at a time.
 - (b) No later than 180 days prior to expiration of the association NPDES permit, the association and its members shall submit an application for a NPDES permit for the discharge of total nitrogen to the surface waters of the Neuse River Basin. The NPDES permit shall be issued to the association and its members as co-permittees ("association NPDES permit"). It shall contain the association's estuary allocation and individual estuary allocations for each of the members.
 - (c) An association's estuary allocation of total nitrogen shall be the sum of its members' individual estuary allocations plus any other estuary

- allocation obtained by the association or its members.
- (d) An association may reapportion the individual estuary allocations of its members on an annual basis. The association NPDES permit shall be modified to reflect the revised individual estuary allocations.
 - (e) Beginning in calendar year 2003, if an association does not meet its estuary allocation, it shall make offset payments for nonpoint source controls no later than May 1 of the following year at the rate set in 15A NCAC 02B .0240.
 - (f) Association members shall be exempted from the permit limits for total nitrogen contained in their individually issued NPDES permits so long as they remain members in an association. Association members shall be exempted from their individual estuary allocations in the association NPDES permit as long as the association is in compliance with its estuary allocation. If the association fails to meet its estuary allocation, the association and the members that have failed to meet their individual estuary allocations in the association NPDES permit will be out of compliance with the association NPDES permit.
- (10) **Regional Facilities.** In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse River Basin and that acceptance results in the elimination of the discharge from the treatment facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to the accepting discharger's estuary allocation.

History Note: Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a) (1); S.L. 1995, c. 572; Temporary Adoption Eff. January 22, 1998; Eff. August 1, 1998; Temporary Amendment Eff. March 15, 2000; Temporary Amendment Expired on December 10, 2000; Amended Eff. April 1, 2003.

15A NCAC 02D .0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with rules in this Section shall, at his own expense, demonstrate compliance by the methods described in Rules .0912 through .0916 and .0939 through .0942 of this Section. The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or

- operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed.
- (b) Volatile organic compound emissions compliance testing shall be allowed and the results shall be accepted, only if the Director has been notified as required by Paragraph (c) of this Rule and if the Director has granted approval. The Director shall grant approval if all the information required under Paragraph (c) of this Rule is included in the notification and if the correct testing procedures are used.
 - (c) Any person proposing to conduct a volatile organic compound emissions test shall notify the Director at least 21 days before beginning the test so that the Director may at his option observe the test. Any person notifying the Director of a proposed volatile organic compound emissions test shall include as part of notification the following minimum information:
 - (1) a statement indicating the purpose of the proposed test;
 - (2) a detailed description of the facility to be tested;
 - (3) a detailed description of the test procedures, equipment, and sampling sites; and
 - (4) a timetable, setting forth the dates on which:
 - (A) The testing will be conducted;
 - (B) Preliminary test results will be reported (not later than 30 days after sample collection); and
 - (C) The final test report will be submitted (not later than 60 days after completion of on-site sampling).
 - (d) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit along with the final test report proposed corrective action.
 - (e) For compliance determination, the owner or operator of any volatile organic compound emissions source shall be responsible for providing:
 - (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;
 - (2) safe access to the sample and data collection locations; and
 - (3) light, electricity, and other utilities required for sample and data collection.
 - (f) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:
 - (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume (gallons) of coating solids consumed during that day on that coating line; or
 - (2) Compliance shall be determined as follows:
 - (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.

(B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.

(g) The Director may authorize the Division of Air Quality to conduct independent tests of any source subject to a rule in this Section to determine the compliance status of that source or to verify any test data submitted about that source. Any test conducted by the Division of Air Quality using the appropriate testing procedures described in this Section shall have precedence over all other tests. The United States Environmental Protection Agency (EPA) may verify any test submitted by the owner or operator of a source, and any test conducted by EPA using the appropriate testing procedures described in this Section shall have precedence over tests conducted by the owner or operator of the source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. April 1, 2003; July 1, 1993; July 1, 1991; March 1, 1991; December 1, 1989; January 1, 1985; July 1, 1980.

15A NCAC 02D .0952 PETITION FOR ALTERNATIVE CONTROLS FOR RACT

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered under this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0937 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility are 100 tons per year or more; and
- (2) sources covered under Rule .0953 or .0954 of this Section.

(c) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director.

(d) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this

- (4) Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;
- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(e) The Director shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (d) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations; and
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable.

(f) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1994; Amended Eff. April 1, 2003; July 1, 1995; May 1, 1995.

15A NCAC 02D .0959 PETITION FOR SUPERIOR

ALTERNATIVE CONTROLS

- (a) This Rule applies to all sources covered under this Section.
- (b) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section, can demonstrate that an alternative operational or equipment control is superior to the required control, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. The petition shall be made for each source to the Director.
- (c) The petition shall contain:
 - (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
 - (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
 - (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
 - (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted; and
 - (5) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

- (d) The Director shall approve a petition for alternative control if:
 - (1) The petition is submitted in accordance with Paragraph (c) of this Rule;
 - (2) The Director determines that the proposed alternative operational or equipment control is superior to the required controls;
 - (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations; and
 - (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable.
- (e) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. April 1, 2003.

15A NCAC 02D .0960 CERTIFICATION OF LEAK TIGHTNESS TESTER

- (a) Purpose. The purpose of this Rule is to establish procedures for certifying facilities to perform leak tightness tests on truck tanks as defined under Rule .0932 of this Section.
- (b) Certification request. To request certification to perform leak tightness testing on truck tanks for the purposes of complying with Rule .0932 of this Section, a facility shall submit to the Director the following information:
 - (1) the name and address of the facility requesting certification, including the primary contact and telephone number;
 - (2) evidence that the facility is registered with the United States Department of Transportation to perform leak checks;
 - (3) evidence that the facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
 - (4) evidence that the facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly;
- (c) Approval. The Director shall certify a facility requesting certification to perform leak tightness testing if he finds that:
 - (1) All the information required under Paragraph (b) of this Rule has been submitted;
 - (2) The Division has observed the facility conducting one or more leak tightness tests and finds that:
 - (A) The facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
 - (B) The facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly;
- (d) Expiration. A certification to perform leak tightness testing under this Rule shall expire one year from the date of its issuance.
- (e) Renewal. To have a certification renewed, the certified facility shall submit to the Director a request to have the certification renewed. Within 30 days after receipt of the request, the Division shall observe the certified facility conducting one or more leak tightness tests. If the Director finds that:
 - (1) The certified facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
 - (2) The certified facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly,
 he shall renew the certification. If the certified facility submits a request for renewal after the expiration of the last certification, the Director shall reject the renewal request, and the facility shall request a new certification under Paragraph (b) of this Rule.
- (f) Interim certification. If the Division is unable to observe the performance of leak tightness testing required under Paragraphs (c) or (e) of this Rule, the Director shall issue an interim certification for up to 90 days to allow the certified facility to perform leak tightness tests. An interim certification shall not be renewed.
- (g) Revocation of Certification. If the Director finds that a certified facility is not performing Method 27 of 40 CFR Part 60,

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Subpart A correctly or that the certified facility is certifying tanks as leak tight that have not passed the leak tightness test, the Director shall revoke the facility's certification or interim certification.

(h) Stickers. The Division shall provide serialized stickers at no cost, or the facility may choose to provide the stickers. If the facility provides the stickers, the stickers shall contain the same information that is on the stickers provided by the Division and shall have the same dimensions and a sample sticker shall accompany the application for certification. Once a facility is certified under this Rule to perform leak tightness tests, stickers are to be:

- (1) affixed to tanks that have passed the test under Rule .0932 of this Section; and
- (2) placed near the Department of Transportation Certification plate (DOT, 49 CFR 178.340-10b).

The certified facility performing the test shall maintain a log matching sticker serial numbers and tank identification numbers. The certified facility shall send this log shall be sent to the Director monthly.

(i) Certification report. The certified facility performing the test shall give a copy of the certification report to the truck tank owner and shall retain a copy of the certification report. The certification report shall contain the following information:

- (1) name, address, and telephone number of certified facility performing the test;
- (2) name and signature of the individual actually performing the test;
- (3) name and address of the owner of the tank;
- (4) serial number of the sticker and identification number of the tank;
- (5) the date that the sticker is issued and the date that the sticker expires, which shall be one year after the issuance date;

15A NCAC 09C .1227 FEES AND CHARGES

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

TYPE OF FACILITY OR CONVENIENCE	FEE
(1) CAMPING	
(a) Primitive, unimproved campsites with pit privies.	\$8.00 (per campsite, daily) Fresh water also available.
(b) Primitive group tent camping, unimproved campsites	\$1.00 (per person, with \$8.00 min) with pit privies.
(c) Improved group camping (water, restrooms and shower	\$35.00 (per day, max capacity 35) facilities available).
(2) PICNIC SHELTER RENTAL (by reservation only)	\$20.00 (1-2 tables) \$35.00 (3-4 tables) \$50.00 (5-8 tables) \$75.00 (9-12 tables)
(3) COMMUNITY BUILDINGS	\$150.00 (per day, includes up to 20 car passes)
(4) HORSE BARN	\$10.00 (daily per horse, ma x. capacity 20 horses)
(5) SPECIAL ACTIVITY PERMIT (for uses not identified in this Rule, requiring	\$1.00 (per person, with a \$25.00 maximum).

- (6) the pressure drops measured and vacuum drops measured; and
- (7) list or description of problems with tank (if none are found, the report shall state that none were found).

The certified facility performing the test shall provide the Director each month a copy of each certification report produced for the previous month. After July 2005, the certified facility shall cease sending the Director copies of the certification reports.

(j) Record retention. The certified facility performing the test and the owner of the truck tank shall keep the certification report for at least two years. Certification reports shall be made available to the Division upon request.

(k) Verification of leak tightness. The Division may use Method 21 to verify the leak tightness of a tank.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (13); Eff. April 1, 2003.

15A NCAC 09C .1219 COMMERCIAL ENTERPRISES

No person shall in or on DuPont State Forest, sell or offer for sale, hire, or lease, any object or merchandise, property, privilege, service or any other thing. Sales from which total proceeds are used in direct support of the forest, or sales conducted or contracted by the Department, are exempt from this Rule.

History Note: Authority G. S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

staff assistance).

*History Note: Authority G. S. 113-35 (b);
Temporary Adoption Eff. March 15, 2002;
Eff. April 1, 2003.*

15A NCAC 10B .0403 APPLICATION FOR TAGS

- (a) Fur tags shall be distributed in response to applications made on forms supplied by the Commission.
- (b) The fees to be charged for each fur tag are as follows:

<u>Species</u>	<u>Fee</u>
Bobcat	2.20
Otter	2.20

- (c) Foxes shall be tagged in accordance with G.S. 113-291.4(g). The carcasses or pelts of foxes lawfully taken and lawfully tagged in an area of open fox season, and those taken under a depredation permit, and those taken under a local law that permits foxes to be sold may be sold; provided that this Paragraph shall not authorize the sale of carcasses or pelts of foxes taken under a depredation permit in any county in which the sale of foxes or parts thereof is prohibited by local law.

*History Note: Authority G.S. 113-134; 113-270.1; 113-273; 113-276.1; 113-291.4;
Eff. November 14, 1978;
Amended Eff. April 1, 2003; January 1, 1992; August 1, 1988;
July 1, 1988; July 1, 1984.*

15A NCAC 10K .0101 COURSE REQUIREMENTS

- (a) The hunter safety course shall provide a minimum of 10 hours of instruction except that a self-paced, independent study hunter safety course that meets the standards required by International Hunter Education Association and includes instruction on safe management of all terrain vehicles and proper use of hunting dogs may also be administered.
- (b) Of the 10 hours of instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to instruction related to the safe handling of firearms. The remaining four hours shall include instruction on hunter responsibility (ethics), wildlife conservation and wildlife management, wildlife identification, game care, specialty hunting, survival and first aid, water safety, and special concerns (alcohol and drugs, turkey hunting, trapping, all terrain vehicles, hunting dogs).
- (c) The hunter education course shall be administered by an instructor certified by the North Carolina Wildlife Resources Commission.
- (d) The following requirements must be satisfied by the course participant in order to successfully complete a hunter education course and be entitled to the issuance of a Certificate of Competency:
 - (1) complete all 10 hours of the instruction or all the material contained in the independent study course;
 - (2) score a minimum of 70 percent on the final examination; and
 - (3) demonstrate safe firearm handling skills.

*History Note: Authority G.S. 113-134; 113-270.1A;
Eff. October 1, 1991;*

Amended Eff. April 1, 2003; April 1, 1996.

15A NCAC 12K .0106 GRANT AGREEMENT

- (a) Upon Authority approval, a written agreement shall be executed between the grant recipient(s) and the Authority on behalf of the Department.
- (b) The agreement shall define the Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) State Clearinghouse environmental review comments made as a result of application review shall be addressed by the applicant prior to execution of the project agreement. Projects judged to have a significant environmental impact shall submit an environmental assessment.
- (e) The grant agreement may be amended upon mutual consent and approval by the Department on behalf of the Authority and the grant recipient(s). The grant recipient(s) shall submit in writing to the Department a formal amendment request for approval. The Department shall approve the amendment if local circumstances justify the amendment request.
- (f) Projects may not begin until the Authority on behalf of the Department and grant recipient(s) sign the agreement unless a waiver has been requested by the applicant in writing and approved by the Authority or its executive committee. Waivers may only be granted for land acquisition projects requiring action prior to the anticipated signing of the agreement. A waiver shall be in effect for one year from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.
- (g) Following execution of the grant agreement, the Department shall reimburse the grant recipient for expenditures related to the project scope. All reimbursements shall be approved by the Department and shall total an amount that is less than or equal to the grant amount. The Department shall approve reimbursement requests for expenditures that are related to the project scope and occur during the project period. This provision is effective after the 2002-03 grant cycle.
- (h) Complete accounting records including a certified project data sheet and performance report verifying eligible costs shall be submitted by the grant recipient(s) to the Department for approval prior to or at the time of the close-out inspection. The Department shall approve the accounting when the records are consistent with the project agreement and budget.

*History Note: Authority G.S. 113-44.15;
Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1995;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. April 4, 2000;
Amended Eff. April 1, 2003; April 1, 2001.*

15A NCAC 12K .0107 MATCHING REQUIREMENTS

- (a) The applicant shall match PARTF funds on a dollar-for-dollar basis.
- (b) The appraised value of land that will be donated to the applicant may be used to match the PARTF grant.
- (c) The donor of the land must be an individual or private organization.
- (d) If a landowner sells land to the applicant for less than the appraised value, the amount of the donation is the difference between the appraised value and the amount paid by the applicant.
- (e) The value of capital improvements that are located on the donated land and will be used for public recreation may be included in the value of the donation.
- (f) Land that is transferred to the applicant due to a statute or rule is not considered a donation.
- (g) The applicant must receive a grant and sign the grant agreement before taking title to donated land.
- (h) Rule .0106 of this Section applies to donated land used as matching funds.

*History Note: Authority G.S. 113-44.15;
 Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. April 1, 1995;
 Amended Eff. August 1, 1998;
 Temporary Amendment Eff. December 9, 2002;
 Amended Eff. April 1, 2003.*

15A NCAC 12K .0108 ELIGIBLE PROJECTS AND COSTS

- (a) PARTF grants are awarded to grantees for projects that are for the sole purpose of providing local park and recreation opportunities to the public. Grantees may receive funds for the following types of projects:
 - (1) Acquisition. Fee simple acquisition of real property for future recreational development and to protect areas with natural or scenic resources.
 - (A) Grantees acquiring property for recreation development have up to five years from when the Authority and the applicant sign the grant agreement to begin developing recreation facilities.
 - (B) Grantees acquiring property to protect areas with natural or scenic resources must open these areas to the general public to the extent that the resources will not be impaired.
 - (2) Development. Projects for the construction, expansion, and renovation/repair of the following:
 - (A) Primary facilities including outdoor and indoor recreation facilities. Examples include camping facilities, picnic facilities, sports and playfields, trails, swimming facilities, boating/fishing facilities, spectator facilities, and gymnasiums.

- (B) Support facilities and improvements such as roads, parking areas, accessibility features, utilities, landscaping, and other infrastructure projects, that would have little or no recreational value without the primary recreation facilities.
- (b) Other criteria for determining eligible projects and costs include:
 - (1) Only development on or acquisition of a single project site is eligible for PARTF assistance.
 - (2) Utility lines developed with PARTF assistance shall be placed underground.
 - (3) Incidental project costs shall be eligible for PARTF assistance including appraisals, architectural and engineering fees, pre-agreement planning costs and contingency fees as follows:
 - (A) Pre-agreement costs such as site planning, preliminary designs, preparation of cost estimates, construction drawings and specifications may not exceed 15 percent of the total development costs and must be incurred within one year of the application submission date.
 - (B) Incidental appraisal costs such as appraisals, title work, surveys and attorney fees may not exceed five percent of the appraised fair market value of the property.
 - (C) Architectural and engineering fees may not exceed 10 percent of the total development cost of the proposed project.
 - (D) A contingency amount may be included in the development cost estimates, but may not exceed five percent of total development costs.
 - (4) PARTF-assisted facilities on school property shall not be recreational facilities generally provided by the school for the use of their students.

*History Note: Authority G.S. 113-44.15;
 Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. April 1, 1995;
 Amended Eff. April 1, 2003; August 1, 1998.*

15A NCAC 18A .2117 WATER SANITATION AND QUALITY

- (a) A water supply shall be provided that complies with the provisions of 15A NCAC 18A .1700.
- (b) Prior to occupancy of a migrant housing facility, water samples for bacteriological analysis shall be collected by an environmental health specialist and submitted to the Division of Laboratory Services of the Department of Environment and Natural Resources or another laboratory certified pursuant to 15A NCAC 20D for analysis. A sample negative for coliform

organisms shall be obtained prior to the issuance of health department approval.

(c) An environmental health specialist may collect water samples after occupancy for analysis by the Division of Laboratory Services of the Department or another laboratory certified pursuant to 15A NCAC 20D to determine the continued safety of the water supply for domestic use. The water supply shall be deemed unsafe for domestic use and action taken as follows:

- (1) The water supply shall be deemed immediately unsafe upon confirmation of the presence of fecal coliform bacteria or, upon determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents poses an immediate threat to life. Under these circumstances, the Department shall immediately contact both the migrant housing operator and the Migrant Housing Division, North Carolina Department of Labor. All verbal contact made by the environmental health specialist shall be confirmed in writing.
- (2) The water supply shall be deemed unsafe for long-term usage upon confirmation of a positive total coliform test or upon determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents poses a threat to health. Under these circumstances, the Department shall, within three days, notify the migrant housing operator and the Migrant Housing Division, North Carolina Department of Labor. All verbal contacts made by the environmental health specialist shall be confirmed in writing.

*History Note: Authority G.S. 95-225;
Eff. October 1, 1990;
Amended Eff. January 1, 2003.*

15A NCAC 19A .0103 DUTIES OF LOCAL HEALTH DIRECTOR: REPORT COMMUNICABLE DISEASES

(a) Upon receipt of a report of a communicable disease or condition pursuant to 15A NCAC 19A .0101, the local health director shall:

- (1) immediately investigate the circumstances surrounding the occurrence of the disease or condition to determine the authenticity of the report and the identity of all persons for whom control measures are required. This investigation shall include the collection and submission for laboratory examination of specimens necessary to assist in the diagnosis and indicate the duration of control measures;
- (2) determine what control measures have been given and ensure that proper control measures as provided in 15A NCAC 19A .0201 have been given and are being complied with;
- (3) forward the report as follows:
 - (A) The local health director shall forward all authenticated reports

made pursuant to G.S. 130A-135 to 137 of syphilis, chancroid, granuloma inguinale, and lymphogranuloma venereum within seven days to the regional office of the HIV/STD Prevention and Care Branch. In addition, the local health director shall telephone reports of all cases of primary, secondary, and early latent (under one year's duration) syphilis to the regional office of the HIV/STD Prevention and Care Branch within 24 hours of diagnosis at the health department or report by a physician.

- (B) The local health director shall telephone all laboratory reports of reactive syphilis serologies to the regional office of the HIV/STD Prevention and Care Branch within 24 hours of receipt if the person tested is pregnant. This shall also be done for all other persons tested unless the dilution is less than 1:8 and the person is known to be over 25 years of age or has been previously treated. In addition, the written reports shall be sent to the regional office of the HIV/STD Prevention and Care Branch within seven days.
- (C) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person residing in that jurisdiction shall forward the authenticated report to the Division of Public Health within seven days.
- (D) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resides in another jurisdiction in North Carolina shall forward the report to the local health director of that jurisdiction within 24 hours. A duplicate report card marked "copy" shall be forwarded to the Division of Epidemiology within seven days.
- (E) A local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resided outside of North Carolina at the time of onset of the illness shall forward the report to the Division of Public Health within 24 hours.

(b) If an outbreak exists, the local health director shall submit to the Division of Public Health within 30 days a written report of the investigation, its findings, and the actions taken to control the outbreak and prevent a recurrence.

(c) Whenever an outbreak of a disease or condition occurs which is not required to be reported by 15A NCAC 19A .0101 but which represents a significant threat to the public health, the local health director shall give appropriate control measures consistent with 15A NCAC 19A .0200, and inform the Division of Public Health of the circumstances of the outbreak within seven days.

History Note: Authority G.S. 130A-141; 130A-144; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. April 1, 2003; December 1, 1991; September 1, 1990.

15A NCAC 19A .0203 CONTROL MEASURES - HEPATITIS B

(a) The following are the control measures for hepatitis B infection. The infected persons shall:

- (1) refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;
- (2) not share needles or syringes;
- (3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
- (4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;
- (5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control measures; and for the duration of the infection, notify the local health director of all new sexual intercourse partners;
- (6) identify to the local health director all current household contacts;
- (7) be tested six months after diagnosis to determine if they are chronic carriers, and when necessary to determine appropriate control measures for persons exposed pursuant to Paragraph (b) of this Rule;
- (8) comply with all control measures for hepatitis B infection specified in Paragraph (a) of 15A NCAC 19A .0201, in those instances where such control measures do not conflict with other requirements of this Rule.

(b) The following are the control measures for persons reasonably suspected of being exposed:

- (1) when a person has had a sexual intercourse exposure to hepatitis B infection, the person shall be tested;
- (2) after testing, when a susceptible person has had sexual intercourse exposure to hepatitis B infection, the person shall be given a dose

appropriate for body weight of hepatitis B immune globulin and hepatitis B vaccination as soon as possible; hepatitis B immune globulin shall be given no later than two weeks after the last exposure;

(3) when a person is a household contact, sexual intercourse or needle sharing contact of a person who has remained infected with hepatitis B for six months or longer, the partner or household contact, if susceptible and at risk of continued exposure, shall be vaccinated against hepatitis B;

(4) when a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that, if the source were infected with the hepatitis B virus, would pose a significant risk of hepatitis B transmission, the following shall apply:

(A) when the source is known, the source person shall be tested for hepatitis B infection, unless already known to be infected;

(B) when the source is infected with hepatitis B and the exposed person is:

- (i) vaccinated, the exposed person shall be tested for anti-HBs and, if anti-HBs is unknown or less than 10 milli-International Units per ml, receive hepatitis B vaccination and hepatitis B immune globulin as soon as possible; hepatitis B immune globulin shall be given no later than seven days after exposure;
- (ii) not vaccinated, the exposed person shall be given a dose appropriate for body weight of hepatitis B immune globulin immediately and begin vaccination with hepatitis B vaccine within seven days;

(C) when the source is unknown, the determination of whether hepatitis B immunization is required shall be made in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention guidelines. Copies of the Control of Communicable Diseases Manual may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling.

Copies of Center for Disease Control and Prevention guidelines contained in the Morbidity and Mortality Weekly Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 for a cost of three dollars fifty cents (\$3.50) each. Copies of both publications are available for inspection in the General Communicable Disease Control Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

- (5) infants born to HBsAg-positive mothers shall be given hepatitis B vaccination and hepatitis B immune globulin within 12 hours of birth or as soon as possible after the infant is stabilized. Additional doses of hepatitis B vaccine shall be given in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention Guidelines. The infant shall be tested for the presence of HBsAg and anti-HBs within three to nine months after the last dose of the regular series of vaccine; if required because of failure to develop immunity after the regular series, additional doses shall be given in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention guidelines. Copies of the Control of Communicable Diseases Manual may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. Copies of Center for Disease Control and Prevention guidelines contained in the Morbidity and Mortality Weekly Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 for a cost of three dollars fifty cents (\$3.50) each. Copies of both publications are available for inspection in the General Communicable Disease Control Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382;
- (6) infants born to mothers whose HBsAg status is unknown shall be given hepatitis B vaccine within 12 hours of birth and the mother tested. If the tested mother is found to be HBsAg-positive, the infant shall be given hepatitis B immune globulin as soon as possible and no later than seven days after birth;
- (7) when an acutely infected person is a primary caregiver of a susceptible infant less than 12

months of age, the infant shall receive an appropriate dose of hepatitis B immune globulin and hepatitis vaccinations in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention Guidelines. Copies of the Control of Communicable Diseases Manual may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. Copies of Center for Disease Control and Prevention guidelines contained in the Morbidity and Mortality Weekly Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 for a cost of three dollars fifty cents (\$3.50) each. Copies of both publications are available for inspection in the General Communicable Disease Control Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

- (c) The attending physician shall advise all patients known to be at high risk, including injection drug users, men who have sex with men, hemodialysis patients, and patients who receive multiple transfusions of blood products, that they should be vaccinated against hepatitis B if susceptible. The attending physician shall also recommend that hepatitis B chronic carriers receive hepatitis A vaccine (if susceptible).
- (d) The following persons shall be tested for and reported in accordance with 15A NCAC 19A .0101 if positive for hepatitis B infection:
- (1) pregnant women unless known to be infected; and
 - (2) donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs.
- (e) The attending physician of a child who is infected with hepatitis B virus and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.
- (f) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee. If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee. If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.

(g) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

- (1) notify the parents;
- (2) notify the committee;
- (3) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
- (4) determine if an alternative educational setting is necessary to protect the public health;
- (5) instruct the superintendent or private school director concerning protective measures to be implemented in the alternative educational setting developed by school personnel; and
- (6) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the hepatitis B virus infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(h) If the child referred to in Paragraph (e) of this Rule is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

History Note: Authority G.S. 130A-135; 130A-144 Eff. February 1, 1990; Amended Eff. October 1, 1990; Recodified from 15A NCAC 19A .0201(i) Eff. June 11, 1991; Amended Eff. August 1, 1998; October 1, 1994; Temporary Amendment Eff. February 18, 2002; Amended Eff. April 1, 2003.

15A NCAC 21A .0819 OPERATING STANDARDS

- (a) Upon approval of an application for grant funds a budget shall be negotiated and a contract shall be signed between the Contractor and the DPH.
- (b) Project funds shall be used solely for the purposes detailed in the approved application and budget.
- (c) Contractors shall not use TPPI funds for purposes that are prohibited by statute, or for the following purposes:
 - (1) purchase of inpatient care;
 - (2) purchase or improvement of land;
 - (3) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;
 - (4) purchase or prescriptions of contraceptives;
 - (5) transportation to or from abortion services; or
 - (6) abortions.
- (d) TPPI projects shall not impose charges on clients for services.
- (e) Staff qualifications, training, and experiences shall be appropriate for implementing project activities.
- (f) Each project shall participate in the annual training conference with state staff and other project staff.

(g) The start-up period before project activities are implemented shall not exceed six months.

(h) Each project shall obtain approval from the DPH prior to making changes in program goals, objectives, and target populations. The Division of Public Health shall only approve changes that are consistent with the rules of this section.

(i) Each project shall have an advisory group composed of members both within and outside the sponsoring agency of the project. These groups shall meet at least quarterly and advise project staff on project policies and operations.

(j) Each project shall define and maintain cooperative ties with other community institutions.

(k) Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.

History Note: Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136; 130A-131.15A; Eff. August 1, 1990; Amended Eff. July 1, 1992; Temporary Amendment Eff. December 1, 2001; Temporary Amendment Expired September 13, 2002; Amended Eff. April 1, 2003.

15A NCAC 21A .0820 EVALUATION AND MONITORING

(a) The DPH shall make site reviews of Contractors to assess program performance.

(b) The DPH shall make periodic site visits to contractors to provide technical assistance and consultation.

History Note: Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136; 130A-131.15A; Eff. August 1, 1990; Temporary Amendment Eff. December 1, 2001; Temporary Amendment Expired September 13, 2002; Amended Eff. April 1, 2003.

15A NCAC 21A .0822 CRITERIA FOR PROJECT SELECTION

(a) The Department shall present funding recommendations to the Commission from among the applicants that meet the minimum standards in rule .0817 of this Subchapter. A multi-disciplinary committee of public and private health and human services providers who are familiar with adolescent health issues shall review applications based upon the criteria set out below. Funding decisions shall be made by the Department based upon the best selection of projects according to the following criteria:

- (1) Degree of need of the locality, including that the service area has an adolescent pregnancy problem as evidenced by its adolescent pregnancy rate, adolescent birth rate, or percentage of repeat adolescent births.
- (2) Evidence of selection of a program model that has documented success in the prevention of teen pregnancy.
- (3) A program evaluation plan that addresses the administration of pre-tests and post-tests that measure participants' knowledge, attitudes, and behaviors as compared to a control group and

- (4) addresses submission of data and an Internet-based database.
- (4) Qualifications of agency and staff to meet project objectives.
- (5) Level of community support. There shall be documentation such as letters or statements of commitment from partnering organizations to show support for the application.
- (6) Evidence that the proposed budget does not exceed the costs of the planned program activities.
- (7) Existing or formerly TPPI-funded projects shall demonstrate that they have reduced pregnancy rates among their participants over the four-year funding period..

(b) The Commission shall provide input regarding the proposed funding decisions made by the Department. The Department shall consider the input from the Commission, but shall not be bound by it. By June 1 of each year the Department shall notify the projects that are to be funded.

History Note: Authority G.S. 130A-124; 130A-131.15; Temporary Adoption Eff. December 1, 2001; Temporary Adoption Expired September 13, 2001; Eff. April 1, 2003.

15A NCAC 21F .1204 REPORTING REQUIREMENTS

(a) All persons performing physiologic hearing screenings for infants less than six months of age shall report within five days following the screening (or date of the appointment for the screening) to the North Carolina State Laboratory for Public Health, using forms developed by the Department of Health and Human Services:

- (1) Identifying information (such as name, address, birthdate, mother's name, mother's Social Security number, mother's Medicaid number, birth hospital, physician, county of residence) for each infant, and either
- (2) The outcome of each hearing screening; or
- (3) The date of the 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, using forms developed by the Department of Health and Human Services.

(b) All birthing/neonatal facilities performing neonatal physiologic hearing screenings shall report quarterly to the Division of Public Health, using forms developed by the Department of Health and Human Services, within 30 days after the end of each quarter in the calendar year, total unduplicated count of:

- (1) Neonates who were screened;
- (2) Neonates whose parents or guardians objected to the hearing screening;
- (3) Live births, if the report is being submitted by a medical 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.
- (a) All persons performing diagnostic auditory 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, using forms developed by the Department of Health and Human Services:

- (1) Identifying information (such as name, address, birthdate, mother's name, mother's Social Security number, mother's Medicaid number, birth hospital, physician, county of residence) for each child, and either
- (2) The outcome of the diagnostic evaluation and amplification selection; or
- (3) The date of the missed appointment for such evaluations or assessments.

History Note: Authority G.S. 130A-125; Temporary Adoption Eff. October 1, 1999; Eff. August 1, 2000; Temporary Amendment Eff. January 8, 2001; Temporary Amendment Expired October 29, 2001; Temporary Amendment Eff. May 17, 2002; Eff. April 1, 2003.

15A NCAC 21H .0111 MEDICAL SERVICES COVERED

Covered medical services, which must be determined to be related to sickle cell disease and approved by the Program, include:

- (1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits shall not exceed triple the Program average for each for the previous two years;
- (2) physicians' office visits;
- (3) drugs on a formulary established by the program based upon the following factors: the medical needs of sickle cell patients, the efficacy and cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients utilizing finite program dollars. A copy of this formulary may be obtained free of charge by writing to the N. C. Sickle Cell Syndrome Program, 1330 St. Mary's Street, Raleigh, North Carolina, 27605;
- (4) medical supplies and equipment;
- (5) preventive dentistry including education, examinations, cleaning, and Xrays; remedial dentistry including tooth removal, restoration, and endodontic treatment for pain prevention; and emergency dental care to control bleeding, relieve pain, and treat infection; and
- (6) eye care (when the division of services for the blind will not provide coverage).

History Note: Authority G.S. 130A-129; Eff. February 1, 1976;

Amended Eff. April 22, 1977;
Readopted Eff. December 5, 1977;
Amended Eff. July 1, 1982; January 1, 1982;
Temporary Amendment Eff. November 7, 1983, for a period of
120 days to expire on March 4, 1984;
Amended Eff. October 1, 1984; March 1, 1984;
Temporary Amendment Eff. October 14, 1988, for a period of
180 days to expire on April 12, 1989;
Temporary Amendment Expired April 12, 1989;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. June 19, 1996;
Temporary Amendment Expired March 11, 1997;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. December 1, 2001;
Temporary Amendment Eff. December 17, 2001;
Amended Eff. April 1, 2003.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 04C .0701 DISTRIBUTOR RESPONSIBLE FOR TAX

History Note: Authority G.S. 105-113.10; 105-113.5;
105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 1994;
Repealed Eff. August 1, 2003.

17 NCAC 05C .0703 BUSINESS AND NONBUSINESS INCOME

History Note: Authority G.S. 105-130.4; 105-262.
Eff. February 1, 1976;
Amended Eff. August 1, 2002; July 1, 2000; July 1, 1999;
January 1, 1994; April 1, 1991; October 31, 1981;
Repealed Eff. August 1, 2003.

17 NCAC 06B .3503 PARTNERSHIP RETURNS

(a) When Required -- A North Carolina partnership return, Form D-403, must be filed by every partnership doing business in North Carolina if a federal partnership return was required to be filed. The partnership return must be filed on or before April 15 if on a calendar year basis and on or before the 15th day of the fourth month following the end of the fiscal year if on a fiscal year basis. For individual income tax purposes, the term "business carried on in this State" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this State. Income from an intangible source, including gain realized from the sale of intangible property received in the course of a business carried on in this State so as to have a taxable situs here (including income in the distributive share of partnership income, whether distributed or not) is included in the numerator of the fraction used in determining the portion of federal taxable income that is taxable to North Carolina by a nonresident. The return must include the names and addresses of the individuals entitled to share in the net income of the partnership and must be

signed by the managing partner and the individual preparing the return.

(b) NC K-1 -- A partnership must provide a completed Schedule NC K-1, or similar schedule, to each person who was a partner in the partnership at any time during the year reflecting that partner's share of the partnership's income, adjustments, tax credits, and tax paid by the manager of the partnership. The schedule must be provided to each partner on or before the day on which the partnership return is required to be filed. When reporting the distributive share of tax credits, a list of the amount and type of tax credits must be provided each taxpayer.

(c) Investment Activity -- A partnership whose only activity is as an investment partnership is not considered to be doing business in North Carolina. An investment partnership is a partnership that is not a dealer in securities, as defined in section 475(c)(1) of the Internal Revenue Code, and that derives income exclusively from buying, holding, and selling securities for its own account. An investment partnership is not required to file an income tax return in North Carolina or pay income tax to North Carolina on behalf of its nonresident partners.

History Note: Authority G.S. 105-154(c); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2003; July 1, 2000; August 1, 1998;
May 1, 1984; June 1, 1993; July 1, 1991; June 1, 1990.

17 NCAC 06B .3527 DISPOSITION OF PARTNER'S INTEREST

(a) An interest in a partnership is intangible personal property. Gain from the sale of a nonresident partner's interest in a partnership is not included in the numerator of the fraction the nonresident uses to determine the amount of income subject to tax in North Carolina unless the sale of the partnership interest conveys title to tangible partnership property. If a partnership owning an interest in another partnership sells its interest in that partnership, the nonresident partners of the partnership selling its interest do not include their distributive shares of the gain realized by the partnership from the sale of its partnership interest in the numerator unless the partnership selling its interest is carrying on a trade or business in this State.

(b) Nonresident partners must include their distributive share of the gains or losses from the sale or other disposition of the partnership's assets in the numerator of the fraction in determining North Carolina taxable income. If the sale of partnership interests conveys title to tangible partnership property instead of to limited interests in the partnership, the transaction is considered a sale of partnership assets for purposes of determining North Carolina taxable income.

History Note: Authority G.S. 105-134.5; 105-152; 105-154;
105-262;
Eff. July 1, 1991;
Amended Eff. August 1, 2003; June 1, 1993.

17 NCAC 07B .4002 FERTILIZER AND SEEDS

(a) Sales of seeds to farmers for agricultural purposes are exempt from sales and use tax. The term "seeds" means seeds in their generally accepted sense and includes flower seed, sets, tubers, roots, tobacco plants, tomato plants, pepper plants, eggplants, potato plants, and other small plants that are raised in beds or hothouses for transplanting. The term "seeds" does not

include potted plants, trees, shrubs, cut flowers, and other larger plants.

(b) Sales of the following to farmers for agricultural purposes are exempt from sales and use tax:

- (1) Commercial fertilizer;
- (2) Lime; and
- (3) Land plaster.

(c) The term "agricultural," as used in this Rule, means cultivating the soil for the production of crops for sale in the regular course of business; the production of animals for sale in the regular course of business; or the holding and management of animals for the production of animal products for sale in the regular course of business. It includes beekeepers, dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, orchardmen and other persons engaged in the commercial production of plants and animals as described in this Rule for sale in the regular course of business. It does not include someone who merely cultivates the soil for the ornamental effects nor does it include home gardening or commercial activities other than the types described in this Rule.

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2003; August 1, 1996; April 1, 1986; February 1, 1986.

17 NCAC 07B .4003 FEED, REMEDIES, VACCINES, MEDICATIONS, AND LITTER MATERIAL FOR ANIMALS

Sales of remedies, vaccines, medications, litter materials, and feed for animals, including cattle, horses, mules, sheep, chickens, turkeys, bees, and fish, held or produced for commercial purposes are exempt from sales or use tax. The terms "remedies" and "medications" mean all medicines in the generally accepted sense of the term and also include tonics for internal use, vitamins, ointments, liniments, antiseptics, anesthetics, and other medicinal substances having preventive and curative properties in the prevention, treatment, or cure of disease in animals. The term "feed" includes dietary supplements, such as minerals, oyster shells, salt, bone meal, and other similar preparations or compounds, to be fed directly or to be mixed with feed for animals for normal growth, maintenance, lactation, or reproduction, but does not include sand or grit. The exemption does not include equipment or devices used to administer, release, or otherwise dispense remedies, vaccines, medications, litter material, or feed. Retail sales of sand or grit for use in the production of animals are subject to the general rate of state tax and any applicable local sales or use tax. Retail sales of remedies, vaccines, medications, litter materials, and feed for pets, such as birds, cats, and dogs, are subject to the general rate of state tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2003; August 1, 1998; October 1, 1993; October 1, 1991; May 1, 1990; May 11, 1979.

17 NCAC 07B .4004 INSECTICIDES AND SIMILAR PRODUCTS

(a) Sales of rodenticides, insecticides, herbicides, fungicides and pesticides, as herein defined, for use in the commercial production of animals or plants are not subject to the sales or use tax. The exemption for these items does not include equipment or devices used to administer or otherwise dispense the items. For the purpose of this the following definitions apply:

- (1) Insecticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects.
- (2) Fungicide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.
- (3) Herbicide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
- (4) Rodenticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents.
- (5) Pesticide means any substance used to kill rats, mites, insects, fungi and bacteria.

(b) Herbicides are exempt only when used as weed killers for the commercial production of plants. The other items herein defined are exempt only when purchased for the commercial production of plants or to spray, dust, dip, fumigate or otherwise protect animals held or produced for commercial purposes or their quarters against insects, diseases or rodents.

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2003; August 1, 1996.

17 NCAC 07B .4007 PROCESSED MANURE

Sales of processed poultry manure, cow manure, and other manure to farmers for agricultural use as a fertilizer are not subject to tax. Occasional or isolated sales by farmers of manure generated in their farming operations are exempt from tax.

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 2003; January 1, 1982.

17 NCAC 12A .0502 REVOCATION OF REGISTRATION

The Motor Fuels Tax Division may revoke a motor carrier's registration for failure to pay any of the following:

- (1) A liability imposed under Subchapter V of Chapter 105, the North Carolina Motor Fuel Tax Laws.
- (2) A liability imposed by another IFTA jurisdiction if the laws, administrative procedures, or reciprocal agreements of the other jurisdiction allow it to revoke a carrier based in that jurisdiction for failure to pay a similar liability imposed by this State.

History Note: Authority G.S. 105-262; 105-449.47; 105-449.57; Eff. August 1, 2003.

17 NCAC 12B .0412 PROPORTIONAL REFUNDS

- (a) Operators of vehicles identified in G.S. 105-449.107 must file Form Gas-1200C to obtain a refund of tax paid motor fuel used in the operation of these vehicles.
- (b) The claim for refund requires an accounting of tax paid motor fuel purchased and used. Invoices for tax paid motor fuel must be submitted with the claim for refund.
- (c) The following records must be kept to support a claim for refund:
- (1) Mileage records by vehicle. The records must include odometer or hubmeter readings.
 - (2) Fuel records by vehicle.
 - (3) Cubic yards of concrete mix delivered, by vehicle; or tons of compacted waste hauled, by vehicle; or tons of bulk feed or fertilizer hauled, by vehicle; or tons of mulch or other similar materials hauled, by vehicle.
 - (4) Withdrawal records kept in accordance with 17 NCAC 12B .0405, if withdrawals of motor fuel from bulk storage are used to service vehicles for which a refund is requested.

History Note: Authority G.S. 105-262; 105-449.107; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0512 effective November 1, 2002; Amended Eff. August 1, 2003.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

18 NCAC 06 .1308 ADVERTISING

- (a) For the purposes of this Rule, "Advertising" shall mean any of the following to be used or circulated with the sale and promotion of a public offering of securities: advertisement; display; pamphlet; brochure; letter; article or communication published in any newspaper, magazine or periodical; or script; or any recording; or any radio or television announcement, broadcast or commercial.
- (b) Filing of Advertising Materials at least 10 days before use within this state, the issuer shall file with the Administrator all advertising and sales material that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a security.
- (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,

- (3) Statements or representations which predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities unless such statements or representations clearly indicate that they represent solely the opinion of the publisher thereof;
 - (4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;
 - (5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;
 - (6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;
 - (7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered; or
 - (8) Other devices or sales presentations that are fraudulent or would tend to work a fraud under G.S. 78A-8 or 78A-10.
- (e) The disseminator of the advertising shall be responsible for its accuracy, reliability and conformance with the Act and this Rule.
- (f) The terms "prospectus, pamphlet, circular, form letter, advertisement, advertising or other sales literature", as used in G.S. 78A-27(b)(12) and those same terms plus the term "advertising communication" used in G.S. 78A-49(d) shall not include a notice, circular, advertisement, letter or communication in respect of the security if it states from whom a written prospectus or offering circular may be obtained, and does no more than identify the security, the price thereof, and the name of one or more registered dealers through whom the security is available.

History Note: Authority G.S. 78A-8(2); 78A-49(a); Eff. April 1, 1981; Amended Eff. October 1, 1988; January 1, 1984; Temporary Amendment Eff. April 1, 2002;

Amended Eff. April 1, 2003.

**18 NCAC 06 .1715 INVESTMENT ADVISER
REGISTRATION DEPOSITORY**

(a) Use of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to the Investment Adviser Registration Depository ("IARD") operated by the National Association of Securities Dealers. The following additional conditions relate to such electronic filings:

- (1) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD.
- (2) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the State.

(b) Electronic Filing. Notwithstanding Paragraph (a) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.

(c) Hardship Exemptions. This Rule provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

- (1) Temporary Hardship Exemption.
 - (A) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.
 - (B) To request a temporary hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Securities Division (P.O. Box 29622, Raleigh, NC 27626-0525) no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and
 - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD

no later than seven business days after the filing was due.

- (C) Effective Date -- Upon Filing. The temporary hardship exemption shall be deemed effective upon receipt by the Administrator of the complete Form ADV-H.
- (2) Continuing Hardship Exemption.
 - (A) Criteria for Exemption. A continuing hardship exemption shall be granted only if the investment adviser is able to demonstrate that it cannot comply with the electronic filing requirements of this Rule because neither the necessary hardware or software nor alternative means of compliance (e.g. public library internet access or a service provider) are available.
 - (B) To apply for a continuing hardship exemption, the investment adviser must:
 - (i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator at least 20 business days before a filing is due; and
 - (ii) If a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application shall grant or deny the application within 10 business days after the filing of Form ADV-H.
 - (C) Effective Date -- Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption shall be no longer than one year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.
- (3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption shall be made by the administrator where the investment adviser's principal place of business is located, which decision shall be followed by the administrator in the other state(s) where the investment adviser is registered.

*History Note: Authority G.S. 78C-20;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations shall be filed with the Board, accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover only its actual cost of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned.

(b) Completed initial applications shall be postmarked with proper postage not later than the last day of January for the spring examination and not later than the last day of July for the fall examination. Completed re-exam applications shall be postmarked with proper postage not later than the last day of February for the spring examination and not later than the last day of August for the fall examination. If one of those dates falls on a weekend or federal holiday, the application shall be postmarked or received in the Board office by the end of the next business day. Only a U.S. Postal Service cancellation shall be considered as the postmark. If an application is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark.

(c) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, such as:

- (1) minimum legal age;
- (2) education;
- (3) experience, if required in order to qualify for the examination; and
- (4) good moral character.
- (5) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or
 - (A) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen; or
 - (B) a notarized affidavit of intention to become a U.S. citizen; or
 - (C) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(d) Official transcripts (originals – not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. However, no examination grades shall be released until an official transcript is filed confirming the information supplied in the college registrar's letter. All applicants submitting transcripts

from foreign schools for consideration of degree and of meeting accountancy course requirements shall have had the transcript(s) evaluated by Foreign Academic Credential Service, Inc. (FACS) or a comparable educational evaluation service. Applicants shall determine that their transcripts contain all information required by these Rules.

(e) If experience is required to qualify for examination, affidavits shall be prepared and signed by employers on forms supplied by the Board.

(f) In order to document good moral character as required by Subparagraph (c)(4) of this Rule, three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

(g) No additional statements and affidavits regarding experience and education shall be required for applications for re-examination.

(h) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of the final deposition if the applicant has been charged, convicted or found guilty of or pleaded *nolo contendere* to any criminal offense.

(i) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(j) Two recent identical photographs shall accompany the application for the CPA examination. These photographs shall have been taken within the last six months. The photographs shall be of the applicant alone, 2x2 inches in size, with an image size from the bottom of the chin to the top of the head, including hair, of between 1 and 1-3/8 inches. Photographs shall be clear, front view, full face, taken in normal street attire without a hat or dark glasses, and printed on thin paper with a plain light background. They shall be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). They may be in black and white or in color. Snapshots, most vending-machine prints, and magazine or full-length photographs are unacceptable. Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

(k) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(l) Effective with the administration of the computer-based CPA Examination, candidates shall file initial and re-exam applications to sit for the CPA Examination.

(m) Effective with the administration of the computer-based CPA Examination, examination fees will be valid for a six-month period from the date of the notice to schedule.

*History Note: Authority G.S. 93-12(3); 93-12(4); 93-12(5);
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 2004; August 1, 1998;
February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989.*

21 NCAC 08F .0105 CONDITIONING

REQUIREMENTS

(a) **Passing Grades.** A candidate shall be required to pass all sections of the examination with a grade of 75 or higher on each section.

(b) **Conditional Credit.** If a candidate does not pass all of the sections in one sitting, conditional credit may be retained for passed sections subject to the following:

- (1) No conditional credit may be retained until the candidate has first passed at least two sections in one sitting;
- (2) To receive conditional credit for any section the candidate must sit for and make a grade of at least 50 on all unpassed sections; and
- (3) The conditional credit is good through the six succeeding times the exam is offered by the Board.

(c) **Military Service.** A candidate who was or is in active military service after receiving conditional credit shall have counted as succeeding examinations only those exams for which that candidate applied and was approved during active military service.

(d) A candidate who has conditional credit prior to January 1, 1997, may continue to apply to sit for the examination as long as the conditional credit is valid. A candidate who no longer has valid conditional credit after January 1, 1997, shall be required to meet all education requirements in effect at the time of their subsequent application.

(e) Effective with the administration of the computer-based CPA Examination, a candidate is subject to the following requirements:

- (1) A candidate shall be required to obtain a passing grade on all sections of the examination within an 18-month period;
- (2) A candidate may sit for any section of the examination individually;
- (3) A candidate may sit for each section of the examination up to four times during a one-year period but not more than one time in a three-month testing window as defined by the examination vendor(s);
- (4) A candidate shall receive credit on the passage of his or her section(s) of the examination; such credit(s) shall be valid for an 18-month period which begins on the date the section(s) passed are taken; and
- (5) A candidate having earned conditional credits on the paper-and-pencil CPA Examination has until October 31, 2005, or 18 months after administration of the last paper-and-pencil examination to pass the remaining section(s) before the credits earned under the paper-and-pencil examination expire.

History Note: Authority G.S. 93-12(3); 93-12(5); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 2004; August 1, 1998; April 1, 1994; April 1, 1991; March 1, 1990.

21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS

(a) A CPA or CPA firm providing any of the following services to the public shall participate in a peer review program:

- (1) Audits;
- (2) Reviews of financial statements;
- (3) Compilations of financial statements;
- (4) Examinations of prospective financial statements;
- (5) Compilations of prospective financial statements;
- (6) Agreed-upon procedures of prospective financial statements;
- (7) Examination of written assertions; and
- (8) Agreed-upon procedures of written assertions.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client.

(c) A CPA, a new CPA firm or a CPA firm exempt from peer review now providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program their first peer review report, the letter of comments, the letter of response, and any work papers required for the peer review program within 24 months of the issuance of the first report provided to a client.

(d) Participation in and completion of one of the following peer review programs is required:

- (1) AICPA Division for CPA Firms SEC Practice Section;
- (2) AICPA Peer Review Program;
- (3) NCACPA Peer Review Program; or
- (4) Any other peer review program approved found to be substantially equivalent to (1), (2) or (3) of this Paragraph in advance by the Board.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

(f) A CPA firm which does not have offices in North Carolina and which has not provided any services as listed in Paragraph (a) of this Rule to North Carolina clients is not required to participate in a peer review program.

(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12 month period of the first peer review unless granted an extension by the peer review program.

History Note: Authority G.S. 93-12(7b); 93-12(8c); Eff. January 1, 2004.

21 NCAC 08M .0107 ETHICAL DUTIES OF REVIEWER

(a) A reviewer shall be independent with respect to the reviewed CPA firm and comply with the AICPA Standards for Performing and Reporting on Peer Reviews.

(b) Information concerning the participating CPA firm or its clients or personnel that is obtained as a consequence of the review is confidential and shall not be disclosed to anyone not involved in the peer review process.

History Note: Authority G.S. 93-12(7b); 93-12(8c); Eff. January 1, 2004.

21 NCAC 08N .0402 INDEPENDENCE

(a) A CPA, or the CPA's firm, who is performing an engagement in which the CPA, or the CPA's firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence shall be considered to be impaired if, during the period of the professional engagement, a covered person:

- (1) had or was committed to acquire any direct or material indirect financial interest in the client;
- (2) was a trustee of any trust or executor or administrator of any estate that had or was committed to acquire any direct or material indirect financial interest in the client; and
 - (A) The covered person had the authority to make investment decisions for the trust or estate; or
 - (B) The trust or estate owned more than 10 percent of the client's outstanding equity securities or other ownership interests or the value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate;
- (3) had a joint or closely held investment that was material to the or covered person; or
- (4) had any loan to or from the client or any officer or director of the client, or any individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests.

(c) Independence shall be considered to be impaired if during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm, his or her immediate family, or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(d) Independence shall be considered to be impaired if, during the period covered by the financial statements, or during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm was simultaneously a:

- (1) Director, officer, employee, or in any capacity equivalent to that of a member of management of the client;
- (2) Promoter, underwriter, or voting trustee of the client; or
- (3) Trustee for any pension or profit-sharing trust of the client.

(e) "Covered person" is:

- (1) A person on the attest engagement team;
- (2) A person in a position to influence the attest engagement;
- (3) A partner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of nonattest services to the client within any fiscal year and ending on the later of the date:
 - (A) the firm signs the report on the financial statements for the fiscal year during which those services were provided; or

(B) he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;

(4) A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;

(5) The firm, including the firm's employee benefit plans; or

(6) An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in Paragraphs (a) through (e) of this Rule or by two or more such individuals or entities if they act together;

(f) The impairments of independence listed in this Rule are not intended to be all-inclusive.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16R .0106 EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi-retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its affect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses in accordance with Rule .0103 of this Section when reclassifying the licensee. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test prior to allowing the licensee to resume practice when there is indication of inability to practice dentistry.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is

directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in Rule .0105 of this Section.

History Note: Authority; 90-38; Eff. May 1, 1994; Amended Eff. April 1, 2003; April 1, 2001; August 1, 1998.

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21 NCAC 18B .0902 CHARGES AND PRELIMINARY PROCEDURES

- (a) The authority given to the Board's executive director in this Rule shall include the executive director's authority to delegate to other members of the Board's staff.
- (b) Charges filed pursuant to G.S. 87-47(a4) shall be handled according to the progressive steps set out in Paragraphs (c) through (f) of this Rule.
- (c) A charge shall be handled initially by the executive director. The executive director may recommend to the Board that the charge be dismissed as unfounded or trivial, without a hearing. Unless so recommended, the executive director shall:
 - (1) issue and cause to be served on the accused a written notice of violation, including a proposed sanction pursuant to G.S. 87-47(a2) or civil penalty pursuant to G.S. 87-47(a3), or both, or
 - (2) give the accused written notice of the charge, including a request that the accused respond to it in writing within 20 days.
- (d) The executive director may, upon receipt and evaluation of the response, recommend to the Board that the charge be dismissed as unfounded or trivial, without a hearing, or the executive director may issue and cause to be served on the accused a written notice of violation, including a proposed sanction pursuant to G.S. 87-47(a2) or civil penalty pursuant to G.S. 87-47(a3), or both, or may turn the matter over to the Board's Disciplinary Review Committee.
- (e) The Disciplinary Review Committee will review regularly the actions of staff, and as to any particular matter, may take the actions outlined in Paragraph (c) of this Rule or may schedule a conference before the Committee with the accused. If a conference is held, the Committee shall issue its findings in the form of a Recommended Order that shall be provided to the accused and proposed for adoption by the full board as a Final Order in the absence of objection by the accused in 20 days.
- (f) The Board shall review the report and recommendations of the Disciplinary Review Committee and as to any matter may, without a hearing, dismiss the charge as unfounded or trivial, adopt the unopposed recommendations of the Committee, schedule a hearing on matters not resolved, or set an administrative hearing on the charge, notice of which may include a statement that the Board shall accept an offer in compromise pursuant to G.S. 87-47(e).
- (g) Before an administrative hearing is held, the Board may direct the disciplinary review committee to meet with the accused and the complainant in a final effort to effect a settlement.

(h) Each notice of violation or Recommended Order shall include a statement of the right to request a hearing, pursuant to G.S. 87-47(a4).

History Note: Authority G.S. 87-42; 87-47; Eff. October 1, 1988; Amended Eff. February 1, 1996; February 1, 1990; Amended Eff. April 15, 2003.

21 NCAC 18B .0907 RESPONSIBILITY OF LICENSEES AND QUALIFIED INDIVIDUALS

- (a) "Gross negligence" within the meaning of G.S. 87-47 means such lack of due care as evidences reckless disregard of human life or the safety of the person exposed to its dangerous effects, or creating a clear and present danger of personal injury, illness or property damage, or that entire want of care as would raise the presumption of a conscious indifference to the rights of others, which is equivalent to an intentional violation of the law.
- (b) "Gross incompetence" refers to such lack of knowledge, supervision or technical competence as to correspond or create risk similar to the consequences of gross negligence.
- (c) "Supervision" within the meaning of G.S. 87-43 refers to that degree of attendance, participation and oversight which is necessary and sufficient to ensure that the project is carried out in a workmanlike manner, with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. Supervision means active onsite review of the work by a qualified individual while the work is in progress.

History Note: Authority G.S. 87-42; 87-50; Eff. April 15, 2003.

21 NCAC 18B .0908 MALPRACTICE

- (a) The provisions of the North Carolina Building Code, including the provisions of the National Electrical Code as modified and adopted by the Building Code Council of North Carolina from time to time, is a minimum standard of competence applicable to contractors licensed by the Board. Malpractice consists in failure to design and install systems that meet or exceed the minimum standards of the North Carolina State Building Code, Manufacturer's specifications and installation instructions and standards prevailing in the industry.
- (b) Malpractice may consist in lack of knowledge of Code, Manufacturer's specifications and industry standards, in a failure to apply such technical knowledge, in undertaking a project that is not planned and supervised, or in undertaking a project that the licensee may not reasonably expect to complete timely and in accordance with codes, specifications, and industry standards.
- (c) Where work is carried out by employees of the licensee, failure to provide supervision of such employees, whether by consistent absence from the workplace or jobsite, or as demonstrated by the failure of the work to comply with this rule, also constitutes malpractice on the part of the licensee.
- (d) Where more than one qualified individual, as defined in G.S. 87-41.1(1) is employed at a firm, each such person is responsible for the work of the firm.

History Note: Authority G.S. 87-42; 87-47; 87-50; Eff. April 15, 2003.

CHAPTER 21 - BOARD OF GEOLOGISTS

21 NCAC 21 .0107 FEES

(a) Completed application forms must be accompanied by the prescribed fee. Application fees shall not be refunded regardless of Board approval or disapproval of the application. Fees shall be:

- (1) Application for license \$ 55.00
- (2) Application for registration \$ 50.00
- (3) Examination per part: cost plus \$ 30.00
- (4) Annual renewal of license \$ 85.00
- (5) Annual renewal of certificate of registration for corporation or limited liability company \$ 25.00
- (6) Application for reinstatement of license \$150.00
- (7) Application for reinstatement of registration \$ 10.00
- (8) Replacement of license or registration certificate \$ 10.00
- (9) Licensed geologist stamp or seal: cost plus \$ 7.50
- (10) Registered geological corporation or limited liability company stamp or seal: cost plus \$ 7.50

(b) All licenses shall expire on July 1. Annual license renewal fees received after July 1 and before August 1 of the year due shall be accompanied by a late payment penalty of fifty dollars (\$50.00).

(c) Licenses that have not been renewed by August 1 may only be renewed by:

- (1) filing a reinstatement application, demonstrating that the applicant is otherwise qualified and entitled to license renewal, in accordance with Rule .0302 of this Chapter;
- (2) payment of any delinquent annual fees having accrued since the last timely renewal of the license; and
- (3) payment of the reinstatement fee specified in Subparagraph (a)(6) of this Rule.

(d) All registrations shall expire on July 1. If a corporation or limited liability company fails to apply for renewal of its certificate of registration by August 1 of the year due, the registration may only be renewed by:

- (1) filing a reinstatement application, demonstrating that the firm is otherwise qualified and entitled to a renewal of its certificate of registration, in accordance with Rule .0302 of this Chapter;
- (2) payment of the required renewal fee; and
- (3) payment of the reinstatement fee specified in Subparagraph (a)(7) of this Rule.

(e) Licenses and registrations that have been revoked under G.S. 89E-19 may be reinstated by filing a reinstatement application in accordance with Rule .0302 of this Chapter and paying the reinstatement fee specified in Subparagraph (a)(6) or (a)(7) of this Rule, as applicable.

(f) Extensions for certain members of armed forces. Individuals who are serving in the armed forces of the United States to whom an extension of time to file a tax return has been granted by G.S. 105-249.2 shall be granted the same extension of time to

pay their annual license fee. Such individuals shall provide to the Board documentation to support their request for extension.

History Note: Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E-13; 89E-19; 93B-15; 105-249.2; Eff. February 1, 1986; Amended Eff. April 1, 2003; May 1, 1994; April 1, 1993; January 1, 1992; April 1, 1990.

21 NCAC 21 .0514 INVESTIGATION

(a) As provided in G.S. 89E-17, valid complaints received by the Board shall be forwarded to an investigator for further inquiry as to whether the acts or omissions alleged violate the provisions of G.S. 89E, the Board's code of professional conduct, or any other rules of this Chapter. The Board's executive director shall notify the licensee or corporate registrant of the complaint and advise the licensee or corporate registrant that:

- (1) He has a duty to cooperate fully with the investigation by the Board; and
- (2) He may submit a written response to the complaint.

(b) The investigator shall collect all information needed to determine whether a violation has occurred and the nature and severity of the violation. Information gathered during the course of an investigation shall be treated by the Board as confidential information in accordance with G.S. 89E-17(c) until the Board takes disciplinary action against the licensee or registrant; however, the Board cannot ensure the confidentiality of any information introduced into evidence in a hearing conducted by the Office of Administrative Hearings upon referral from the Board, because the information becomes part of the public record of that agency at the time of introduction.

(c) After collecting information relevant to the complaint, the investigator shall submit a report consisting of the complaint, information gathered in the course of investigation, and the investigator's conclusion to a peer review committee for evaluation. The peer review committee shall consist of at least two professional geologists, each of whom hold a currently valid license issued by the Board.

(d) The investigation report (including, but not limited to, the supporting information relevant to the complaint) and the written evaluation of the peer review committee shall be submitted to the Executive Director of the Board to be combined with the licensee's written response to the complaint, if any, for further proceedings in accordance with Rule .0515 of this Section.

History Note: Authority G.S. 89E-5; 89E-17; 89E-20; Temporary Adoption Eff. November 24, 1999; Eff. August 1, 2000; Amended Eff. April 1, 2003.

21 NCAC 21 .0515 DISCIPLINARY PROCEDURE

(a) Upon receipt of an investigation report and evaluation from the Board's investigator and peer review committee in accordance with Rule .0514 of this Section, the Board's Executive Director shall forward to the Chairman of the Board (or to a member of the Board designated by the Chairman) the investigation report, evaluation, and the supporting

documentation along with the licensee's or registrant's written response to the complaint, if any.

(b) The Chairman (or a member of the Board designated by the Chairman) shall propose the disciplinary action for the violation(s) revealed by the investigation consistent with the provisions of G.S. 89E-19. The Chairman (or a member of the Board designated by the Chairman) may issue a summary suspension pursuant to G.S. 150B-3(c). The Chairman or his designee, may also propose dismissal of the complaint.

(c) After review of the investigation report, evaluation, and supporting documentation, the Chairman shall notify the licensee or registrant of the proposed disciplinary action by certified mail sent to the last known address of the licensee or registrant as indicated by the Board's official roster. This notification shall contain a summary of the alleged facts or conduct upon which the proposed disciplinary action is based, the effective date of the proposed disciplinary action, and an explanation of the licensee's or registrant's hearing rights pursuant to G.S. 150B, Article 3A. Notification for summary suspensions shall meet the requirements of G.S. 150B-3(c).

(d) The licensee or registrant has 15 days from receipt of notification of proposed disciplinary action to file with the Board a written request for hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due. If the licensee or registrant does not file a written request for hearing with the Board, the Board shall receive the Chairman's recommendation on disciplinary action at its next meeting. If, after limited review of the facts of the case, a majority of the Board agrees with the Chairman's recommendation, the proposed disciplinary action becomes a final agency decision. If a majority of the Board does not agree with the Chairman's recommendation, the Board shall review of the investigator's report without supporting documentation for the purpose of proposing an appropriate disciplinary action or dismissal. The Chairman shall not participate in the deliberations or the voting with regard to either his recommendation or the Board's decision regarding a substitute disciplinary action. A new notice of proposed disciplinary action will be sent to the licensee or registrant, if necessary, in accordance with the procedure set out in Paragraph (c) of this Rule, and the licensee or registrant has 15 days from receipt of the new notice of proposed disciplinary action to file with the Board a written request for a hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due.

(e) The licensee or registrant may request a settlement conference; however, neither the request for settlement conference nor the Board's agreement to enter into settlement negotiations will extend the 15-day deadline for requesting an opportunity for a hearing or any other deadlines in the hearing process. The Chairman (or a member of the Board designated by the Chairman) is delegated authority to negotiate a settlement; however, the settlement agreement must be approved by a majority of the members of the Board before the proposed disciplinary action will be rescinded.

(f) Upon receipt of written request for hearing, the Board may conduct an administrative hearing as authorized by G.S. 150B-38 or the Board may request the Office of Administrative Hearings to conduct the hearing as authorized by G.S. 150B-40. Hearings shall be conducted in accordance with the rules of this Chapter.

(g) A majority of the members of the Board shall render the final agency decision, in accordance with G.S. 150B-42, after a hearing on the proposed disciplinary action. The Chairman, or if applicable the designated member, who proposed the disciplinary action after a full review of the facts available to the investigator and peer review committee shall not participate in the discussion of the contested case and shall not vote on the final decision for disciplinary action. Nothing in this Rule shall prevent members of the Board from participating in the discussion and vote on a final agency decision with regard to proposed disciplinary action if they have reviewed the investigator's report without supporting documentation solely for the purpose of determining whether probable cause existed to support the allegations of violation and for the purpose of proposing an appropriate disciplinary action.

History Note: Authority G.S. 89E-5; 89E-19; 89E-20; 150B-3; 150B-38 through 150B-42; Temporary Adoption Eff. November 24, 1999; Eff. August 1, 2000; Amended Eff. April 1, 2003.

21 NCAC 21 .0604 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

(a) In all cases heard by the Board, the Board shall issue its decision after its next regularly scheduled meeting following the close of the hearing, but no later than 120 days after the close of the hearing as required by G.S. 150B-44.

(b) In all cases where a request for hearing is granted by the Board, but the case has been referred to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing, the Board will issue its decision within 60 days after its next regularly scheduled meeting following receipt of the proposal for decision, hearing transcript, and other evidence submitted or offered as proof at the hearing conducted by the administrative law judge.

(c) The time for issuing a final agency decision may be extended by agreement of the parties.

History Note: Authority G.S. 89-5; 89E-20; 150B-38; 150B-40; 150B-42; 150B-44; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0607 EXTENSION OF TIME; NOTIFICATION OF FINAL DECISION

(a) An extension of time to take any action required by these Rules may be granted by the Board after considering the following circumstances:

- (1) the age of the case;
- (2) whether the circumstances necessitating the extension are outside of the control of the moving parties;
- (3) whether the moving parties have previously received an extension of time;
- (4) the potential prejudice, inconvenience, or other harm to any party; and
- (5) the likelihood that an extension will delay the ultimate resolution of the matter.

(b) A final agency decision shall be made within the time limits of G.S. 150B-44, and the parties may receive notice of the

decision by telephone, electronic mail, facsimile, or any other method deemed by the Board to be helpful in assuring prompt notification of the parties. The written final decision shall be filed at the Board's office and served on all parties by certified mail, return receipt requested at the last address given by the party. Service on other persons receiving notice of the final decision shall be made by first class mail. The Board shall maintain the records of all contested cases in accordance with its records disposition schedule.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-44; Eff. April 1, 2003.

21 NCAC 21 .0803 PETITION FOR RULEMAKING HEARINGS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule (the "proposed rule") by the Board shall file the petition with the Board. The first page of the petition shall clearly bear the notation: RULEMAKING PETITION RE and then state the subject area. The Petition shall contain the following information:

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

(b) An original and eight copies of the petition and supporting documents shall be filed with the Board.

(c) Filings failing to contain the information required by this Rule shall not be accepted. Incomplete filings shall be returned by the Chairman to the person(s) making the filing.

History Note: Authority G.S. 89E-5; 150B-20; Eff. February 1, 1986; Amended Eff. April 1, 2003.

21 NCAC 21 .0903 DISPOSITION OF REQUESTS

(a) The Board's Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Board may:

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

- (2) request a written response from any other person; or
- (3) hear oral argument from the petitioner and other persons on the issues raised by the request.

(c) Upon written request, the party requesting the declaratory ruling and any other person by leave of the Board may be allowed to present oral arguments to the Board at a regularly scheduled meeting or special meeting called for the purpose of considering the request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding.

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

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

- (1) the facts are in dispute;
- (2) there has been a similar determination in a previous contested case or declaratory ruling;
- (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (5) no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented; or
- (6) other good cause exists for declining to issue the requested ruling.

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

(g) A declaratory ruling shall be deemed to be "in effect" until:

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

(h) The requesting party may agree to allow the Board to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.

History Note: Authority G.S. 89E-5; 89E-20; 150B-4; Eff. February 1, 1986;

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1414 DRUG DISTRIBUTION AND CONTROL

(a) MEDICATION ORDERS.

- (1) Pharmacists shall dispense medications from a health care facility pharmacy only upon receipt of a medication order. A mechanism shall be in place to verify the authenticity of the medication order. Oral orders shall be put in writing immediately and signed within the time frame established by regulatory agencies and health care facility policies and procedures.
- (2) All medication orders shall be received and reviewed by a pharmacist and, at a minimum, shall contain the:
 - (A) patient's name, location and other necessary identifying information such as history or medical records number;
 - (B) medication name, strength, dosage form, route of and directions for administration. In the absence of a facility policy on interpretation of routes of administration, the route of administration must be specified;
 - (C) date the order was written; and
 - (D) prescriber's signature (may include electronic signature or verification).
- (3) The health care facility pharmacy and the pharmacist-manager shall ensure that medication orders for patients requiring continuous drug therapy shall be entered into a patient medication profile, either manual or automated. The medication profile shall, at a minimum, contain the:
 - (A) patient's name, location and important clinical data such as age, height, weight, sex, and allergies;
 - (B) medication name, strength, dosage form, route of and directions for administration;
 - (C) medication start date;
 - (D) medication discontinuance date; and
 - (E) identification of pharmacist responsible for or verifying technician entry of the medication order.
- (4) Abbreviations used in medication orders shall be agreed to, jointly adopted, and published by the medical, nursing, pharmacy, and medical records staff of the health care facility.
- (5) Medication orders shall be reviewed and discontinued or suspended, if appropriate, when the patient is transferred to the delivery room, operating room, or is admitted from another facility. A method to protect the patient from indefinite, open-ended drug

orders must be provided. The prescriber shall be notified in a timely manner that the order shall be stopped before such action takes place by one or more of the following:

- (A) the routine monitoring of patient's drug therapy by a pharmacist;
 - (B) a health care facility-approved, drug class-specific, automatic stop order policy covering those drug orders not specifying a number of doses or duration of therapy; or
 - (C) a health care facility-approved automatic cancellation of all drug orders after a predetermined time interval unless rewritten by the prescriber.
- (6) Health care facilities which credential practitioners for prescribing privileges within the facility shall provide the health care facility pharmacy with credentialing information annually or immediately upon discharge or when privileges are suspended or terminated.
- (b) DEVICES. Devices shall be dispensed in accordance with Section .2600 of this Chapter.
- (c) DISPENSING. In health care facilities with 24 hour pharmacy services, all dispensing shall be done by a pharmacist. In health care facilities without 24 hour pharmacy services, Rule .1413 of this Section shall apply in the absence of a pharmacist.
- (d) LABELING.
- (1) The health care facility pharmacy and the pharmacist dispensing the drug shall ensure that all drugs dispensed from within a health care facility pharmacy are labeled and identified up to the point of administration;
 - (2) Whenever a drug is added to a parenteral admixture, it shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, expiration date, and expiration time, if applicable. For admixtures prepared outside the pharmacy, the pharmacist-manager shall develop policies and procedures for preparation and labeling.
- (e) PARENTERAL MEDICATIONS. The dispensing of parenteral medications shall be done in accordance with Section .2800 of this Chapter--Sterile Parenteral Pharmaceuticals.
- (f) PATIENT CARE UNIT MEDICATION INVENTORIES. This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.
- (1) The pharmacist-manager shall develop an approved drug list for each health care facility location. Non-controlled drugs may be stocked in quantities limited to not more than five dosage units per drug on a health care facility patient care unit when immediate availability is deemed essential to the patient's health and well-being. Drugs shall be stored in a manner that prevents unauthorized access and shall only be administered to a patient of the health care facility pursuant to a medication order.

- (2) All controlled substances stocked within a health care facility that are not located within the facility's pharmacy or automated dispensing device must be accompanied by a disposition form issued from the pharmacy. This document shall at a minimum contain:
- (A) the product name, strength, dosage form, and quantity supplied;
 - (B) the date transferred to the patient care unit by the pharmacy;
 - (C) the name of the pharmacy representative supplying, and the patient care unit representative receiving the drug;
 - (D) the date, time, and amount of the drug removed from the patient care unit stock for administration; and
 - (E) the patient name and identification of the person acquiring the product.
- (3) Exceptions to this Paragraph shall be made for use of automated dispensing devices provided that these devices meet all applicable rules for controlled substances contained therein.
- (4) When a dose of a controlled substance has been prepared for a patient but not used (i.e., refused, order canceled, or contaminated), it may be destroyed at the patient care unit. The destruction must be witnessed by a health care provider, such as a pharmacist, registered nurse, or licensed practical nurse. The pharmacist-manager shall ensure that details of the event, along with the identification of the two who effected the destruction, are documented. If such record is separate from the disposition form, it shall be maintained uniformly with the corresponding disposition form.

(g) **ANCILLARY DRUG CABINET INVENTORIES.** (This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.) Drugs that are routinely prescribed by the medical staff in a health care facility shall be maintained in quantities limited to not more than five dosage units per drug as a supplementary inventory for use only when the pharmacy is closed. The pharmacist-manager shall, in connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The pharmacist-manager shall, at a minimum, assure that:

- (1) access to such drug inventories is by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;
- (2) only authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;
- (3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs shall be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the

record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:

- (A) the date of removal of the drug;
- (B) the name, strength, dosage form, and quantity of drug removed;
- (C) the name of the patient for whom the drug was ordered;
- (D) the name or identification code of the authorized personnel removing the drug from inventory;

- (4) all drugs are reviewed no less often than quarterly to ensure their purity, potency, and integrity; and
- (5) written policies and procedures are established to implement the requirements of this Rule.

(h) **AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES.** Automated Dispensing or Drug Supply Devices such as but not limited to Pyxis machines may be utilized in health care facility pharmacies and where a pharmacy permit exists provided that the pharmacist-manager has developed procedures to assure safe and effective use of medications in accordance with 21 NCAC 46 .1814.

(i) **EMERGENCY KITS.** (This Paragraph does not apply to adult care homes or assisted living facilities) Drugs and devices may be provided in emergency kits for use by authorized personnel provided the pharmacist-manager, in conjunction with the medical staff of the health care facility, develop and implement written policies and procedures to ensure compliance with the following provisions:

- (1) the pharmacist-manager, or designee, and the medical staff of the health care facility jointly determine the drugs and devices, by identity and quantity, to be included in the kit. Drugs and devices included in the kit shall be limited to those for emergency use only and are not to be used for any other purpose.
- (2) the emergency kit contains those drugs and devices which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent prolonged discomfort or risk of harm to patients;
- (3) the emergency kit shall be stored in a secure, readily available location under the supervision of the nursing staff and sealed with a non-reusable, removable seal to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs and devices within them. Policies and procedures shall be established to ensure the integrity of the kit at all times;
- (4) the exterior of the emergency kit shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and is for use in emergencies only. In addition, a listing of the drugs and devices contained therein, including name, strength, and quantity of each drug or device shall be attached. Each

emergency kit shall be inspected by a pharmacist or his designee every 30 days (90 days for long-term care facilities) to check for expiration dates and the integrity of the seal;

- (5) all drugs and devices contained within the emergency kit shall be labeled, if applicable, with, at a minimum, the name, strength, lot number, manufacturer, and expiration date;
- (6) drugs and devices shall be removed from the emergency kit for administration to a patient only pursuant to a valid physician's order, by personnel authorized by the facility;
- (7) whenever an emergency kit is opened, the pharmacy shall be notified. The pharmacist-manager or designee shall re-stock, re-seal, and return the kit to the unit within a reasonable length of time in order to prevent risk of harm to patients. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the health care facility. In the event the kit is opened in an unauthorized manner, the pharmacy and other personnel designated by the pharmacist-manager of the facility shall be notified; and
- (8) Emergency drugs that are controlled substances must be stored in compliance with 10 NCAC 45G .0410.

(j) RECORDS.

- (1) The pharmacist-manager shall, in addition to the requirements for preserving prescription orders as set forth in G.S. 90-85.26, develop a system of daily accountability for medication compounding and dispensing that shall permit the identification of the responsible pharmacists and pharmacy technicians. Readily retrievable records of accountability shall be maintained for at least 30 days. At a minimum, this system shall identify all personnel who perform these activities and the pharmacist responsible for:
 - (A) interpretation and appropriateness of new medication orders;
 - (B) profile entry of new medication orders;
 - (C) dispensing of new medication orders including stat doses;
 - (D) daily cart fills;
 - (E) intravenous admixtures;
 - (F) compounded medications; and
 - (G) periodically assessing the quality of pharmacy procedures for preparation and release of drugs and devices for replenishment of floor stock, ancillary drug supplies, and automated dispensing devices in locations outside the pharmacy.
- (2) Upon notification of medication errors resulting from the administration of an incorrect medication or dose, the pharmacist-manager shall document such medication

error. Documentation shall include pertinent chronological information and include documentation on health care facility forms. These documents shall be archived in a readily retrievable manner, open for inspection, for a period of three years.

- (3) Upon notification of information that reasonably suggests that there is a probability a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient (see 21 NCAC 46 .2502(k) RESPONSIBILITY OF PHARMACIST-MANAGER), the pharmacist-manager shall retain all documents, labels, vial, supplies, substances and internal investigative reports relating to the event. All such items shall be maintained by the health care facility, accessible to the pharmacist-manager, and open to the Board of Pharmacy.
- (4) The pharmacist-manager shall maintain records of ordering, receiving, dispensing or transfer of controlled substances. These records shall include, but are not limited to the following:
 - (A) Invoices or other such documents verifying the ordering and receipt of controlled substances;
 - (B) Perpetual inventories of controlled substances transferred to patient care units and other sites as allowed by this Rule (i.e., automated dispensing devices, emergency kits, etc.). These inventories shall record the transfer date; location transferred to; the identity of the drug; strength, dosage form, and quantity transferred; transferring pharmacist's name;
 - (C) Disposition records required by Paragraph (f)(4) of this Rule;
 - (D) A record of controlled substances dispensed directly to the patient to include the patient's name; date dispensed; dispensing pharmacist's name; name, strength, dosage form, and quantity of the drug dispensed. The records shall also document drugs returned and credited; and
 - (D) A perpetual inventory shall be maintained on all controlled substances awaiting destruction or return to a vendor.
- (5) Automated systems may be used to collect and store information required by Subparagraph (j)(4) of this Rule provided such system allows for the immediate retrieval (via CRT display and hard-copy printout) of original medication order information and dispensing history consistent with criteria cited in 21 CFR .1306 and 10 NCAC 46 .2304.
- (6) With the exception of Subparagraph (j)(1) of this Rule, all records required by this Section

shall be maintained for a period of three years. Such records shall be archived in a uniform manner, retrievable to the pharmacy within 48 hours, and open for review, copying, or seizure by a member or designated employee of the Board.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34; Eff. May 1, 1997; Amended Eff. April 1, 2003; April 1, 1999; August 1, 1998.

21 NCAC 46 .1505 EXAMINATION

(a) The examination shall consist of testing in the following areas:

- (1) theoretical examination including pharmacology, pharmacy, chemistry, mathematics, and the practice of pharmacy which may be reported separately or combined as one score.
- (2) practical pharmacy examination which may be reported separately or combined as one score including: prescription reading and interpretation, drug identifications, determination of errors and omissions, pharmaceutical jurisprudence, patient counseling, drug utilization review, and such other reasonable tests of the applicant's ability to translate professional knowledge into terms of actual practice.

(b) For the purpose of grading or rating, the answers, which shall be legible, shall be valued by marks or points based on their importance, as determined by the judgment of the examiners.

(c) In order to pass, a score of 75 or more is required on both the practical and the theoretical sections. Candidates who obtain a score of 75 or more on the practical pharmacy section or a score of 75 or more on the theoretical section are deemed to have passed the respective section provided that the candidate obtains a passing score on the remaining section in North Carolina within the next following two calendar years. A candidate who fails to pass both sections of the examination in the two calendar year period must retake and pass both sections of the examination.

(d) At the time of the examination, the Board may designate certain questions which, if missed, shall require the candidate to obtain continuing education. The continuing education required will be specified by the Board and must be obtained by the candidate prior to issuance of a pharmacist license.

History Note: Authority G.S. 90-85.15; 90-85.16; Eff. April 1, 1983; Amended Eff. April 1, 2003; July 1, 1996; December 31, 1985.

21 NCAC 46 .1801 RIGHT TO REFUSE A PRESCRIPTION

(a) A pharmacist or device and medical equipment dispenser may refuse to fill or refill a prescription order if, in his professional judgment, it would be harmful to the recipient, is not in the recipient's best interest or if there is a question as to its validity.

(b) A pharmacist shall not fill or refill a prescription order if the pharmacist actually knows or reasonably should know that the order was issued without a physical examination of the patient and in the absence of a prior prescriber-patient relationship.

History Note: Authority G.S. 90-85.6; 90-85.32; Eff. April 1, 1983; Amended Eff. April 1, 2003; September 1, 1995.

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

21 NCAC 50 .0106 LOCATION OF OFFICE

The mailing address is the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC 27609. The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

History Note: Authority G.S. 87-16; 87-18; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2003; August 1, 2002; June 11, 1998; November 1, 1993; April 1, 1991.

21 NCAC 50 .0202 OBTAINING FORMS

All forms may be obtained on request from the Executive Director, State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, North Carolina, 27609.

History Note: Authority G.S. 87-18; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2003; June 11, 1998; April 1, 1991.

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping

(b) Each applicant shall be required to read, interpret and provide answers to all parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

(d) Licensure in the Limited Fire Sprinkler Inspection classification is issued to persons who carry out inspections of fire sprinkler systems consistent with NFPA-25. Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET is accepted in lieu of examination. License shall be issued beginning July 1, 2003, to applicants who meet the experience requirement in Rule .0306. In lieu of examination, all such licensees must present evidence of the foregoing certification on or before December 31, 2005, and maintain such certification thereafter as a condition of license renewal.

(e) Applicants for license in the Limited Fire Sprinkler Maintenance classification are qualified based on maintenance of the experience and job classification set forth in Rule. 0306.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b); Eff. February 1, 1996; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2003; August 1, 2002; July 1, 1998; July 1, 1991; May 1, 1989; August 1, 1982.

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for examinations shall file an application in the Board office on a form provided by the Board.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours or work which involves the kinds of work set out hereafter only part of the time.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for licensure in the Limited Fire Sprinkler Inspection classification must submit evidence adequate to establish 4000 hours experience as a full-time employee of a licensed fire sprinkler contractor holding unlimited license, or 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of a fire insurance underwriting organization.

(f) Applicants for examination in the Limited Fire Sprinkler Maintenance classification must submit evidence of 4000 hours experience as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems consisting of minor repairs, replacing activated or damaged sprinklers, lubricating control valves, and resetting dry pipe valves. This license is limited to work on the systems at the locations for which experience is certified. Upon termination of employment for the certifying employer, the Limited Fire Sprinkler Maintenance license shall lapse.

History Note: Authority G.S. 87-18; 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994; November 1, 1993; April 1, 1991; May 1, 1990.

21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the license be performed while the work is in progress.

(b) The provisions of the North Carolina Building Code, including the provisions of codes and standards incorporated by reference, to the extent adopted by the Building Code Council of North Carolina from time to time is the minimum standard of competence applicable to contractors licensed by the Board. Licensees shall design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code, Manufacturer's specifications and installation instructions and standards prevailing in the industry.

(c) Limited Fire Sprinkler Maintenance licensees shall be present in person at all times work is being carried out on the system.

History Note: Authority G.S. 87-18; 87-23; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2003; July 1, 1991; October 1, 1989; May 1, 1989.

21 NCAC 50 .0506 MINOR REPAIRS AND ALTERATIONS

(a) The connection of a factory installed and inspected mobile home drainage system to an existing approved premises sewer system, which premises sewer system extends from the septic tank or municipal sewer system, constitutes a minor repair or

replacement. The connection of a factory installed mobile home water system to an existing potable water supply on the premises constitutes a minor repair or replacement.

(b) The initial installation or the subsequent replacement of a hot water heater in any structure requires a license in plumbing contracting.

(c) The installation of a water purification system which interrupts the potable water supply does not constitute a minor repair or replacement within the meaning of G.S. 87-21(c).

(d) Any connection, repair, or alteration which requires interruption of the potable water supply and if poorly performed creates risk of contamination of the potable water supply is not a minor repair, replacement or alteration.

(e) Any connection, repair or alteration which if poorly performed creates risk of fire or exposure to carbon monoxide, open sewage or other gases is not a minor repair, replacement or alteration.

(f) The failure to enumerate above any specific type of repair, replacement or alteration shall not be construed in itself to render said repair, replacement or alteration as minor within the meaning of G.S. 87-21(c).

History Note: Authority G.S. 87-18; 87-21(a)(1); 87-21(a)(5); 87-21(c); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. November 1, 1993; May 1, 1989; April 15, 1978; February 1, 1978; Temporary Amendment Eff. September 15, 1997; Temporary Amendment Expired June 28, 1998; Amended Eff. March 15, 2003.

21 NCAC 50 .1101 EXAMINATION FEES

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

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

(c) An application for a license by examination requires a fee of one hundred dollars (\$100.00), consisting of an application fee of twenty-five dollars (\$25.00) and an examination fee of seventy-five dollars (\$75.00), which is nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.

History Note: Authority G.S. 87-18; 87-22.1; 87-22; 87-26; Eff. May 1, 1989; Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990; Amended Eff. August 1, 2000; November 1, 1993; March 1, 1990; Temporary Amendment Eff. August 31, 2001; Amended Eff. March 15, 2003; December 4, 2002.

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education during the preceding calendar year as a condition of license renewal.

(b) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects as related to plumbing or heating contracting.

(c) At least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete four hours instruction devoted entirely to N. C. building codes including recent changes or amendments to those codes, minimum of two hours instruction in system design, two hours instruction in system installation and two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects as related to plumbing or heating contracting. These hours are part of and not in addition to the requirements set out in Paragraph (a) of this Rule.

(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications shall take instruction so as to remain current in all areas of contracting work in which actively engaged.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) Continuing Education shall not be required of holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), or for persons holding NICET Level III certification in Inspection and Testing of water-based Fire Protection Systems provided such persons submit evidence of continued compliance with the continuing education requirements of NICET.

(g) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Fire Sprinkler Contractor's license not current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

(a) Continuing Education courses taken in 1999, 2000, 2001, or 2002 may be applied to the six hour annual requirement for 2003 renewals. Thereafter, licensees may not carry over hours from one calendar year to the next.

(b) Newly licensed individuals shall have no continuing education requirements for the calendar year in which they first become licensed.

(c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests shall be determined within 90 days on a case by case basis consistent with the requirements applicable to all licensees.

(d) Licensees who are over the age of 65, and who shall not be engaged in bidding supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain an exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.

(e) Instructors in Board-approved courses shall receive continuing education credit for lecture hours in approved courses.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1403 COMPUTATION OF CONTINUING EDUCATION HOURS

(a) To obtain one hour of continuing education credit a licensee and a course provider must certify the licensee's completion of one hour of actual instruction in a sponsored course. Except with prior approval by the Board, a licensee shall receive no credit for a course for which the licensee has previously received credit in the current or two preceding calendar years. Approval shall be granted only for courses on building code content and changes therein.

(b) Actual instruction does not include introductory remarks, breaks, business meetings, marketing of equipment, advertisements or time spent on non-approved subjects. Each hour of actual instruction may include one break of 10 minutes duration.

History Note: Authority G.S. 87-21(b)(3); 87-2; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS

(a) In order for course credit to be obtained, the course must be approved and consist of instruction in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or

heating systems. Business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects related to plumbing or heating contracting shall also be approved.

(b) In order for course credit to be obtained, the course must be taught by the instructor or alternate listed when the course was approved by the Board.

(c) Courses shall have a minimum of two hours of actual instruction and a maximum of six hours of actual instruction, per day.

(d) Courses shall be held in facilities conducive to learning. Such facilities include community colleges, technical schools, or community centers.

(e) Courses shall be open to all interested licensees that the host facility can reasonably accommodate and for audit by Board representatives; courses may not be restricted to employees, dealers or members of a particular firm or group.

(f) Once listed on the six-month course roster, a course may not be cancelled during that six month period.

(g) Though courses may have commercial sponsors, the courses shall not include promotion of products or services of a particular firm or manufacturer.

(h) Correspondence, home study, license exam preparation (cram) courses shall not be approved.

(i) For the information of all licenses, the Board shall maintain a calendar of all courses available during a six-month period.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1405 APPROVAL OF COURSES

(a) To obtain approval of a course a provider or proposed provider must submit a written application to the board on or before the first day of September of each year for courses to be offered the following January through June and on or before the first day of March each year for courses to be offered the following July through December. The application must include:

- (1) two complete sets of written course materials and a detailed course outline; and
- (2) an application cover sheet on a form supplied by the Board identifying the applicant, the name, training and experience of all speakers, the proposed date(s) of the course, the host facility, the place where applications for enrollment should be sent, the cost, and the total continuing education hours being offered.

(b) Preliminary review of course applications shall be carried out by a committee appointed by the Board, that shall include some providers of approved courses. Committee recommendations shall be presented to the Board for final approval.

(c) As a condition of course approval, providers shall agree to submit to the board, in the form provided by the Board, and within 30 days of the course date set out on the application, an alphabetical listing of all licensees who attended and completed the course and a copy of any course materials distributed to participants together with certification that the course was provided consistent with the application.

(d) Providers who fail to provide the information set forth in Paragraph (c) of this Rule shall not thereafter be approved to conduct a course.

(e) Licensees may select courses other than those offered by pre-approved while attending out of state educational functions. In order to obtain approval, the licensee must submit a written application for approval on a form obtained from the Board upon completion of each such course. In lieu of such form, an advertising brochure may be submitted, provided the brochure includes the topic, content of lecture material, date, time, location, name and qualifications of speaker and the number of contact hours received upon completion of the program. The licensee must also provide independent verification of attendance. Board evaluation of courses not pre-approved may result in disapproval.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1407 CERTIFICATION OF COURSE COMPLETION BY LICENSEES AND PROVIDERS

(a) Licensees shall submit, prior to license renewal, a certification of the number of continuing education hours completed in that calendar year.

(b) Upon request, applicants shall provide evidence of the course title, number, teacher, location and date, hours in fact attended, and a copy of the certificate provided by the teacher at the conclusion of the course.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1408 ADVERTISEMENTS BY COURSE PROVIDERS OR INSTRUCTORS

Providers of approved courses shall provide an advance copy of any brochure or marketing material for review 10 days before use and shall include in brochures and course descriptions a statement substantially as follows:

This course has been approved by the North Carolina State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors for continuing education credit toward license renewal in the amount of ___ hours. This course is not sponsored by the Board.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

21 NCAC 50 .1409 TERMINATION OF COURSE OR PROVIDER APPROVAL

The Board may suspend or terminate approval of any course or all courses offered by a provider if the Board finds a failure to comply with the Board's rules, the course outline, incompetence or misconduct of faculty or for misstatements as to content or participation, and may specify the conditions under which future applications would be favorably considered.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. March 15, 2003.

CHAPTER 54 - PSYCHOLOGY BOARD

21 NCAC 46 .2803 REQ/PHARMACIES DISPENSING STERILE PHARMACEUTICALS

All locations holding a pharmacy permit where sterile pharmaceuticals are routinely compounded for dispensing must meet the following requirements:

- (1) The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile products. This area shall be structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.
- (2) The permit-holder preparing sterile products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:
 - (a) Environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;
 - (b) Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;
 - (c) Disposal containers for used needles, syringes, etc., and if applicable cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;
 - (d) When cytotoxic drug products are prepared, environmental control devices; also include biohazard cabinetry;
 - (e) include biohazard cabinetry;
 - (f) Refrigerator-freezer with a thermometer;
 - (g) Temperature controlled delivery containers; and
 - (h) Infusion devices, if appropriate.
- (3) The permit-holder dispensing sterile pharmaceuticals shall maintain inventories of the following supplies: Disposable needles, syringes, and other supplies needed for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action;

disposable, lint-free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, caps, gowns, and gloves.

- (4) In addition to the requirements of Rule .1601(a)(3) of this Chapter, a permit-holder dispensing sterile pharmaceuticals shall have in its reference library the following reference materials: Handbook on Injectable Drugs (ASHP); King's Guide to Parenteral Admixtures; American Hospital Formulary Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

History Note: Authority G.S. 90-85.6; Eff. October 1, 1990; Amended Eff. April 1, 2003; September 1, 1995.

21 NCAC 54 .2804 QUALIFICATIONS AND TRAINING

(a) Prior to the provision of ancillary services by an unlicensed individual, the psychologist supervising or employing the individual shall provide training in and establish that the individual has knowledge and understanding of legal and ethical requirements for maintaining confidentiality, exceptions to confidentiality including mandated reporting of suspected abuse or neglect, and professional ethics, and shall ensure that documentation is maintained in writing that the individual is trained in the aforementioned areas. Documentation of training shall include the date(s) on which training occurred, the purpose of the training, the identity of the individual(s) providing the training, and the total number of hours of training for each date on which the training occurred. Training in professional ethics shall include applicable areas of the Code of Conduct contained in the North Carolina Psychology Practice Act at G.S. 90-270.15(a). Documentation of qualifications and training that occurred prior to the effective date of this Rule shall not be required for ancillary services personnel who were employed prior to the effective date of this Rule and who continue in the same ancillary services position with the same agency or practice. Training occurring for any ancillary services personnel after the effective date of this Rule shall be documented as described in this Rule.

(b) Any psychologist supervising or employing an unlicensed individual to provide ancillary services shall provide instruction in and establish that the individual shall have received training sufficient to perform the activities delegated to the unlicensed individual, or otherwise shall ensure that documentation is maintained in writing that the individual is trained to perform the activities. The psychologist shall maintain documentation of the employee's or supervisee's training for at least seven years following the termination of ancillary services by ancillary services personnel.

(c) A psychologist shall not employ or supervise individuals to provide ancillary services who have previously been licensed or certified to practice psychology who have relinquished their licenses or certification or who have had their licenses or certification restricted, suspended, or revoked by the Board in North Carolina or any other jurisdiction.

History Note: Authority G.S. 90-270.9; 90-270.21; Eff. April 1, 2003.

21 NCAC 54 .2805 SERVICES APPROPRIATE FOR ANCILLARY SERVICES PERSONNEL

(a) Clerical functions requiring a minimum of judgment are appropriate activities in which unlicensed individuals may engage. Examples of these activities include responding to telephone inquiries, scheduling appointments, filing insurance claims, typing psychological reports, and completing data entry of test results after a patient or client has responded to such items as questionnaires, forms, etc. These activities shall be appropriate for ancillary services personnel to provide under the supervision of a psychologist. A psychologist who employs or supervises unlicensed individuals to provide only the services described in this Paragraph shall otherwise be exempt from the requirements of Rule .2803, Paragraph (a) of this Section as to these unlicensed individuals.

(b) Tasks requiring technical skills, training and judgment during execution are appropriate activities in which unlicensed individuals may engage. Examples of these activities include obtaining demographic histories; implementing biofeedback techniques; administering and scoring specific parts of psychological tests, including neuropsychological tests, which are scored on a pass/fail, multiple choice, or true/false basis, or for which scores are based on speed or quantity of performance; administering intelligence tests and other psychological tests to an individual in which the patient or client's performance may alter the length of the protocol, require adjustment of the number of items administered, or require that a decision be made to probe a response of the patient or client provided that ancillary services personnel have been deemed by the licensee to have met the training requirements of the test publisher; and implementing specific behavioral interventions that are part of a detailed treatment plan. A psychologist may delegate such technical tasks to an unlicensed individual upon determining that the tasks can be performed, given the client or patient's characteristics and circumstances, in a manner consistent with the unlicensed individual's training and skills. A psychologist who employs or supervises unlicensed individuals to provide the services described in this Paragraph shall comply with documentation and supervision requirements specified in Rule .2803 of this Section.

(c) Pursuant to G.S. 90-270.15(a)(17), a dated entry shall be made in the patient or client's records at any time that an ancillary service is provided at the request or direction of the licensee. This requirement shall include all ancillary services provided and billed to a third party or paid by the patient or client to the licensee and all ancillary services for which there is no charge. Unlicensed individuals providing ancillary services who make clinical record entries regarding services they provide shall sign such entries and indicate their titles under Rule .2802 of this Section as providers of ancillary services. The psychologist shall ensure that case notes, financial statements, and other records of services identify whether the psychologist or the unlicensed individual was the direct provider of the service.

History Note: Authority G.S. 90-270.9; 90-270.21; Eff. April 1, 2003.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

21 NCAC 57B .0102 CERTIFIED RESIDENTIAL

REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rule .0101 of this Section, an applicant for certification as a state-certified residential real estate appraiser is required to complete a minimum of 30 hours in Introduction to Income Property Appraisal (G-1). This course must be taken after the applicant's successful completion of the prelicensing courses specified in Rule .0101 of this Section. Credit for this course must be earned from a Board-approved course sponsor or school.

(b) An applicant who is not a trainee or a state-licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a trainee or state-licensed residential real estate appraiser must have completed the required course in Introduction to Income Property Appraisal (G-1) within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002.

21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rules .0101 and .0102 of this Section, an application for certification as a state-certified general real estate appraiser is required to complete the following precertification courses, each involving a minimum of 30 classroom hours:

- (1) Advanced Income Capitalization (G-2); and
- (2) Applied Income Property Valuation (G-3).

These courses must be commenced and completed after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section. Income Property Appraisal (G-1) shall be a prerequisite for Advanced Income Capitalization (G-2), and Advanced Income Capitalization (G-2), shall be a prerequisite to Applied Income property Valuation (G-3). Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is not a trainee, or a state-licensed or state-certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a trainee or a state-licensed or state-certified residential real estate appraiser must have completed all courses required beyond those required for his current licensure or certification within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002.

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

21 NCAC 68 .0216 BACKGROUND INVESTIGATION

(a) Every applicant for registration or certification shall provide, at her or his expense, a criminal history record check obtained within 60 days of the date when the applicant submits all the prerequisites for registration or certification. This record check shall be made from information the applicant can access from local, State, and national files in any jurisdiction in which the applicant was subject to conviction. If the applicant is unable to obtain the report from the issuing agency due to the agency's denial of a request for the report, a verified statement listing all of the applicant's criminal convictions (to include all crimes appearing in the categories listed below) shall satisfy this requirement.

(b) The applicant shall provide any additional information regarding any conviction as requested by the Board.

(c) Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to registration or certification pursuant to G.S. 90-113.44.

(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) The categories of crimes (committed as separate incidents) are as follows:

- (1) Category I. The following crimes:
 - (A) Homicide or 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 bodily or emotional harm to others, including:
 - (A) Manslaughter;
 - (B) Kidnapping or attempted kidnapping;
 - (C) Arson of an occupied dwelling;
 - (D) Robbery or attempted robbery;
 - (E) Assault (felony);
 - (F) Larceny from the person;
 - (G) One or more felony DWIs;
 - (H) Burglary; and
 - (I) Sale and delivery violations of the North Carolina Controlled Substances Act resulting in a felony conviction.
- (3) Category III. Listed misdemeanors; and felonies that do not primarily result in bodily or emotional harm to others including:
 - (A) Any combination of three or more misdemeanors from Category IV shall be reclassified as a Category III offense;
 - (B) Three or more DWIs not prosecuted as a felony;
 - (C) Assault (misdemeanor);
 - (D) Larceny not from the person;
 - (E) Financial transaction card theft or fraud;
 - (F) Unauthorized use of a motor vehicle;
 - (G) Unlawfully carrying a weapon;

- (H) Theft of a vehicle;
- (I) Falsification of government documentation (felony); and
- (J) Arson of an unoccupied dwelling.
- (4) Category IV. Misdemeanors not otherwise listed that do not primarily result in bodily or emotional harm to others including:
 - (A) Any combination of three or more Category V incidents, except three misdemeanor DWIs shall be a reclassified as a Category III offense;
 - (B) Two DWIs;
 - (C) Possession of a controlled substance;
 - (D) Injury or damage to property;
 - (E) Resisting arrest;
 - (F) Larceny;
 - (G) Prostitution;
 - (H) Criminal mischief;
 - (I) Driving while license suspended or revoked; and
 - (J) Falsification of government documents.
- (5) Category V. Category V offenses are:
 - (A) One DWI;
 - (B) Disorderly conduct; and
 - (C) Intoxicated and disruptive in public.

(f) The Board shall determine if the conviction is 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 extent to which a registration or certification might offer an opportunity to engage in further criminal activity of the same type; and
- (3) 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 continue to process the registration or certification application.

(h) If the Board determines that the conviction does relate to the duties and responsibilities of a substance abuse professional:

- (1) An applicant with a Category I conviction shall have at least 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 10 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 five 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.

(i) 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.

(j) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in Article 5C of Chapter 90 and Chapter 150B of the North Carolina General Statutes and the North Carolina Administrative Code.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44; Temporary Adoption Eff. May 15, 2002; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003.

21 NCAC 68 .0306 RENEWAL OF INDIVIDUAL CERTIFICATION AS CLINICAL ADDICTIONS SPECIALIST

(a) An applicant who is in the deemed status group shall submit the following every two years:

- (1) A completed application form and copy of current substance abuse certification from the applicant's deemed status professional discipline.
- (2) A non-refundable recertification fee of thirty-five dollars (\$35.00).

(b) All other individual applicants shall:

- (1) Renew certification as classified by the criteria for their original certification every two years.
- (2) Document completing 40 hours of education pursuant to Section .0400 of this Chapter, during the current certification period. A minimum of 30 hours shall be substance abuse specific. This education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.
- (3) Meet recertification educational guidelines as a substance abuse professional as follows:
 - (A) No more than 25 percent may be inservice education, received within the applicant's organization by staff of the same employment.

APPROVED RULES

- (B) No more than 25 percent receiving supervision with two hours of supervision translating to one hour of education.
- (C) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be pursuant to Rule .0213 of this Chapter.
- (D) No more than 25 percent of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.
- (E) All applicants shall include six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and three hours of professional ethics training and education for each certification.
- (4) A completed application form with continuing education documented.
- (5) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

Each county desiring to receive funding from the Juvenile Crime Prevention Council fund shall:

- (1) Notify the Department of the establishment of the Juvenile Crime Prevention Council;
- (2) Ensure that Juvenile Crime Prevention Council funds are used exclusively for programs that provide direct services to juveniles who have either been adjudicated delinquent or undisciplined, petitioned for delinquent acts or undisciplined behavior, diverted from intake, or at-risk of becoming delinquent;
- (3) Determine whether or not it is in its best interests to collaborate with other counties for the development of programs to address their juvenile needs;
- (4) Utilize generally accepted accounting procedures that guarantee the integrity of the expenditure of Juvenile Crime Prevention Council funds in local programs;
- (5) Report to the North Carolina Department of Juvenile Justice and Delinquency Prevention at or about the end of the third quarter of each year the anticipated balance of unexpended funds and to report program expenditures at the end of the fiscal year;
- (6) Provide the North Carolina Department of Juvenile Justice and Delinquency Prevention with an annual risk and needs based plan for the provision of services to address the local juvenile justice need; and
- (7) Ensure that programs receiving state funds are public agencies or private non-profit organizations and that they are appropriately licensed.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38; 90-113.39; 90-113.41A; 90-113.43; Temporary Adoption Eff. November 15, 1997; Eff. August 1, 1998; Amended Eff. April 1, 2003; August 1, 2002.

History Note: Authority G.S. 143B-516; 143B-517; 143B-544; 143B-549; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

**TITLE 28 – DEPARTMENT OF JUVENILE JUSTICE
AND DELINQUENCY PREVENTION**

**28 NCAC 02A .0201 RESPONSIBILITIES OF
COUNTY GOVERNMENT**

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, February 20, 2003, 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, February 14, 2003 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

February 20, 2003
March 20, 2003 April 17, 2003
May 15, 2003 June 19, 2003

Commission Review/Administrative Rules

Log of Filings (Log #194)

December 20, 2002 through January 20, 2003

DEPARTMENT OF AGRICULTURE

Purpose	2 NCAC 22A .0101	Repeal
Officers	2 NCAC 22A .0103	Repeal
Guidelines for Fund Expenditures	2 NCAC 22A .0104	Repeal
Annual Meetings	2 NCAC 22B .0101	Repeal
Special Meetings	2 NCAC 22B .0102	Repeal

STATE BOARDS/NC AUCTIONEER LICENSING BOARD

Board Office	21 NCAC 4B .0102	Amend
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STATE PERSONNEL COMMISSION

Career State Employee Classification Designation	25 NCAC 1B .0107	Repeal
Special Provisions	25 NCAC 1D .1945	Amend
Overtime Compensations Prohibited: Exempt Employee	25 NCAC 1D .1951	Amend
Additional Periods of Entitlement for Reserve Com	25 NCAC 1E .0805	Amend
Retention and Continuation of Benefits	25 NCAC 1E .0809	Amend
Donor Guidelines	25 NCAC 1E .1305	Amend
Interference with Rights	25 NCAC 1E .1410	Amend
Special Leave Provisions	25 NCAC 1E .1607	Adopt

AGENDA

Rules Review Commission

February 20, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-0205; .0301; .0302; .0304-.0306; .0308; .0309
Carried over to February from 12/19/02 (DeLuca)
 - B. Department of Agriculture – 2 NCAC 52C .0701 Objection 12/19/02 (DeLuca)
 - C. Board of Elections – Extend Period of Review 01/16/03 (DeLuca)

RULES REVIEW COMMISSION

- D. DHHS/Medical Care Commission – 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101 Objection 11/21/02 (Bryan)
- E. Department of Health and Human Services – 10 NCAC 26H .0211; .0213; .0215; .0304; .0506 Objection 12/19/02 (Bryan)
- F. Department of Insurance – 11 NCAC 11F .0205 and .0207 Objection 01/16/03 (DeLuca)
- G. Wildlife Resources Commission – 15A NCAC 10F .0318 Objection 01/16/03 (DeLuca)
- H. Commission for Health Services – 15A NCAC 21D .0202; .0410; .0501; .0702; .0703; .0704; .0706 Objection 01/16/03 (Bryan)
- I. Health and Wellness Trust Fund Commission – 20 NCAC 10 .0101; .0102; .0201-.0210; .0301; .0302 Extend Period of Review 01/16/03 (DeLuca)
- J. NC State Board of Dental Examiners – 21 NCAC 16E .0101 Objection 11/21/02 (DeLuca)
- K. Board of Pharmacy – 21 NCAC 46 .1812; .2504 Referred to OSBM 11/21/02
- L. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (DeLuca)
- M. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)
- N. NC State Board of Community Colleges – 23 NCAC 2E .0201 Objection 01/16/03 (DeLuca)
- IV. Commission Business
- V. Next meeting: March 20, 2003

CONTESTED CASE DECISION

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. Issa Fuad Shaikh T/A Variety Pic Up #14	01 ABC 0874	Conner	12/03/02	
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. Jerry Lynn Johnson T/A E & J Millenium	02 ABC 0115	Conner	10/23/02	
Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission	02 ABC 0157	Mann	12/03/02	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission	02 ABC 0629	Chess	11/19/02	17:13 NCR 1116
NC ABC Commission v. Cevastiano Hernandez T/A Cristy Mexican Store	02 ABC 0667	Gray	10/17/02	
NC ABC Commission v. Easy Street Bistro, Inc. T/A Raleigh Live	02 ABC 0781	Wade	10/23/02	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>CEMETARY COMMISSION</u>				
Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
Elbert Reid, Jr. v. Crime Victims Compensation Commission	02 CPS 0431	Conner	11/13/02	
Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission	02 CPS 0760	Chess	11/19/02	
Willie Ray Lucas v. Crime Victims Compensation Commission	02 CPS 0770	Wade	01/06/03	
Claudia White v. Crime Victims Compensation Commission	02 CPS 0894	Conner	01/08/03	
Phyllis Ponder Duren v. Crime Victims Compensation Commission	02 CPS 1173	Gray	11/06/02	
Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services	02 CPS 1332	Lassiter	09/20/02	
William S. McLean v. Crime Victims Compensation Commission	02 CPS 1600	Lassiter	11/18/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec.	01 DCS 2351	Elkins	10/28/02	17:11 NCR 1024
Thelma Street v. NC DHHS	01 DHR 0303	Reilly	09/17/02	
Emilia E Edgar v. DHHS, Div. of Facility Services	01 DHR 1356	Hunter	09/09/02	
Joyce Jeanette Jones v. DHHS, Div. of Facility Services	02 DHR 1663	Conner	11/15/02	
Evelia Williams v. NC DHHS	01 DHR 1750	Conner	07/15/02	
Jacob Jones v. NC DHHS, Div. of Medical Assistance	01 DHR 2169	Wade	10/04/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	

CONTESTED CASE DECISION

Brenda L. McQueen v. DHHS, Div. of Facility Services	01 DHR 2321	Morrison	10/17/02	
Tammy Baldwin v. DHHS, Div. of Facility Services	01 DHR 2329	Morrison	10/16/02	
Pamela S Vuncannon v. DHHS, Div of Child Development	01 DHR 2332	Chess	11/18/02	
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	
Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar	01 DHR 2366	Conner	09/11/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Ursula Philomena Nwapa v. NC DHHS	02 DHR 0091	Wade	12/18/02	
Albemarle Home Care & Ginger Parrish, PhD v. NC DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Shonta R. Fox v. NC Dept. of Health & Human Services	02 DHR 0218	Conner	11/08/02	
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	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. NC DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
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	
Debra A. Browner v. NC DHHS, Broughton Hospital	02 DHR 0405	Conner	08/28/02	
NC Community Association v. NC DHHS, Off. of Economic Opportunity	02 DHR 0497	Morrison	12/11/02	17:14 NCR 1200
Bill & Suzy Crawford for (NEELY) Crawford v. NC DHHS	02 DHR 0539	Wade	12/18/02	
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	
Wayne Douglas Temples v. NC DHHS, NC Off. of Emer. Med. Svcs.	02 DHR 0543	Morrison	10/09/02	
Mark Thomas v. NC DHHS, Div. of Facility Services	02 DHR 0555	Chess	10/17/02	
Eli Maxwell v. NC DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Laura Sheets v. DHHS, Div. of Facility Services	02 DHR 0569	Conner	10/17/02	
Evelyn Denise Humphrey v. NC DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
James Parks v. NC Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Andrea Green, Parent, on behalf of her minor child, Andrew Price v. The Durham Clinic	02 DHR 0682	Gray	11/07/02	
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Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 1475 ⁵	Conner	11/21/02
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SUBSTANCE ABUSE PROFESSIONAL BOARD

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