

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
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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	earliest date for public hearing	Notice of Text					
volume & issue number	issue date	last date for filing			earliest date for publication of text	non-substantial economic impact			substantial economic impact	
			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		
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	
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	
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	
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	
17:17	03/03/03	02/10/03	05/15/03	03/18/03	04/02/03	04/21/03	05/00/04	05/02/03	05/20/03	
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	
17:19	04/01/03	03/11/03	06/02/03	04/16/03	05/01/03	05/20/03	05/00/04	06/02/03	06/20/03	
17:20	04/15/03	03/25/03	06/16/03	04/30/03	05/15/03	05/20/03	05/00/04	06/16/03	06/20/03	
17:21	05/01/03	04/09/03	07/01/03	05/16/03	06/02/03	06/20/03	05/00/04	06/30/03	07/21/03	
17:22	05/15/03	04/24/03	07/15/03	05/30/03	06/16/03	06/20/03	05/00/04	07/14/03	07/21/03	
17:23	06/02/03	05/09/03	08/01/03	06/17/03	07/02/03	07/21/03	05/00/04	08/01/03	08/20/03	
17:24	06/16/03	05/23/03	08/15/03	07/01/03	07/16/03	07/21/03	05/00/04	08/15/03	08/20/03	
18:01	07/01/03	06/10/03	09/02/03	07/16/03	07/31/03	08/20/03	05/00/04	09/02/03	09/22/03	
18:02	07/15/03	06/23/03	09/15/03	07/30/03	08/14/03	08/20/03	05/00/04	09/15/03	09/22/03	
18:03	08/01/03	07/11/03	10/01/03	08/16/03	09/02/03	09/22/03	05/00/04	09/30/03	10/20/03	
18:04	08/15/03	07/25/03	10/15/03	08/30/03	09/15/03	09/22/03	05/00/04	10/14/03	10/20/03	
18:05	09/02/03	08/11/03	11/03/03	09/17/03	10/02/03	10/20/03	05/00/04	11/03/03	11/20/03	
18:06	09/15/03	08/22/03	11/17/03	09/30/03	10/15/03	10/20/03	05/00/04	11/14/03	11/20/03	
18:07	10/01/03	09/10/03	12/01/03	10/16/03	10/31/03	11/20/03	05/00/04	12/01/03	12/22/03	
18:08	10/15/03	09/24/03	12/15/03	10/30/03	11/14/03	11/20/03	05/00/04	12/15/03	12/22/03	
18:09	11/03/03	10/13/03	01/02/04	11/18/03	12/03/03	12/22/03	05/00/04	01/02/04	01/20/04	
18:10	11/17/03	10/24/03	02/02/04	12/02/03	12/17/03	12/22/03	05/00/04	01/16/04	01/20/04	
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	
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	

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 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 fifteenth 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 rule is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rulemaking proceedings was published.

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

EARLIEST
The hearing shall be held after the text is published.

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 rule is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rulemaking proceedings was published.

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

FIRST REGULAR ASSEMBLY: The date of the next regular session of the General Assembly following the end of the comment period.

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

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

The Estate of Katherine C. Bell

Pursuant to N.C.G.S. § 130A-310.34, the Estate of Katherine C. Bell has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of 0.6 acres and is located at 2935 Griffith Street (a.k.a. 111 New Bern Street). Environmental contamination exists on the Property in soil and groundwater. The Estate of Katherine C. Bell has committed itself to make no use of the Property other than for commercial office/warehouse space. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the Estate of Katherine C. Bell, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Charlotte, Neighborhood Development Key Business, Employment & Business Service, located at 600 East Trade Street, Charlotte, NC 28202 by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704)336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

NOTICE

The Division of Facility Services of the Department of Health and Human Services has received an interim report from Mission-St. Joseph's Health System, Inc., as required by the Certificate of Public Advantage (COPA) that was issued allowing it to operate as an integrated entity. The report will be used in part by the Department and the Department of Justice in determining whether the COPA should continue. The public shall have 30 days to file any written comments on the report or on the advantages or disadvantages of continuing the COPA. The COPA has been in effect since December 29, 1995. Comments may be addressed to "Mission-St. Joseph COPAR review," c/o Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701. A copy of this report may be obtained by writing to the above address or by calling (919) 855-3750.

U.S. Department of Justice

Civil Rights Division

JDR:JBG:TGL:par
DJ 166-012-3
2003-1312

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

June 4, 2003

Karen M. McDonald, Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28301-1513

Mr. Jerry Wilson
Managing Partner
Reapportionment Group 2000
3009 Rainbow Drive, Suite 143
Decatur, Georgia 30034

Dear Ms. McDonald and Mr. Wilson:

This refers to five annexations (Ordinance Nos. 09-457 (2001), and 02-458, 03-459, 04-460, and 05-461 (2002)), their designation to districts, and the 2003 redistricting plan for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 10, 2003; supplemental information was received on May 19, 2003.

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

PROPOSED RULES

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Division of Facility Services intends to adopt the rules cited as 10A NCAC 14B .0301-.0344 and amend the rules cited as 10A NCAC 14C .1101, .1501-.1503, .2202-.2203, .2403 .2701-.2703, .3603, .3701, .3703. Notice of Rule-making Proceedings was published in the Register on March 13, 2002 and December 19, 2002.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: August 21, 2003

Time: 2:00 p.m.

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

Reason for Proposed Action: *The 2003 State Medical Facilities Plan (SMFP) is effective for one calendar year—beginning January 1, 2003. The temporary rules adopted effective January 1, 2003 will expire prior to the end of the calendar year if permanent rules are not adopted. As such, the permanent adoption of these rules are necessary to ensure compliance with the 2003 SMFP and the recommendations made by the State Health Coordinating Council as approved by the Governor.*

Note: The temporary version of these rules were originally located in 10 NCAC 03R. As of June 1, 2003, those Rules were recodified to 10A NCAC 14B & 14C. The authority for that recodification can be found in Section 21.10 of S.L. 2001-424.

Comment Procedures: *Comments from the public shall be directed to Mark Benton, Chief of Budget and Planning, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3750 and email mark.benton@ncmail.net. Comments shall be received through August 21, 2003.*

Fiscal Impact

- State** 10A NCAC 14B .0324-.0325, .0333
- Local** 10A NCAC 14B .0324-.0325, .0333
- Substantive** (\geq \$5,000,000) 10A NCAC 14B .0324-.0325, .0333
- None** 10A NCAC 14B .0301-.0323, .0326-.0332, .0336-.0344; 14C .1101, .2202-.2203, .2403, .2701-.2703, .3603, .3701, .3703, .1501-.1503

CHAPTER 14 – FACILITY SERVICES

SUBCHAPTER 14B – CERTIFICATE OF NEED REGULATIONS

SECTION .0300 – PLANNING POLICIES AND NEED DETERMINATIONS FOR 2003

10A NCAC 14B .0301 APPLICABILITY OF RULES RELATED TO THE 2003 STATE MEDICAL FACILITIES PLAN
Rules .0301 through .0304 and .0306 through .0333 and .0336 through .0344 of this Section apply to certificate of need applications for which the scheduled review period begins during calendar year 2003. In addition, Rule .0305 of this Section shall be used to implement procedures described within it during calendar year 2003.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0302 CERTIFICATE OF NEED REVIEW SCHEDULE

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

- (1) Acute Care Beds (in accordance with the need determination in 10A NCAC 14B .0306)

Hospital Service System	CON Beginning Review Date
Cannon Memorial Hospital	October 1, 2003

- (2) Operating Rooms (in accordance with the need determination in 10A NCAC 14B .0308)

PROPOSED RULES

<u>Ambulatory Surgery Service Area (Constituent Counties)</u>	<u>Certificate of Need Beginning Review Date</u>
<u>27 (Hoke, Lee, Montgomery, Moore, Richmond, Scotland)</u>	<u>September 1, 2003</u>

(3) Fixed Cardiac Catheterization/Angioplasty Equipment (in accordance with the need determination in 10A NCAC 14B .0311)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Forsyth</u>	<u>February 1, 2003</u>
<u>Guilford</u>	<u>October 1, 2003</u>
<u>New Hanover</u>	<u>July 1, 2003</u>
<u>Wake</u>	<u>March 1, 2003</u>

(4) Shared Fixed Cardiac Catheterization/Angioplasty Equipment (in accordance with the need determination in 10A NCAC 14B .0312)

<u>Hospital Service System</u>	<u>CON Beginning Review Date</u>
<u>Randolph Hospital</u>	<u>October 1, 2003</u>

(5) Gamma Knife (in accordance with the need determination in 10A NCAC 14B .0317)

<u>Gamma Knife Planning Region</u>	<u>CON Beginning Review Date</u>
<u>2 (HSAs IV, V, VI)</u>	<u>November 1, 2003</u>

(6) Radiation Oncology Treatment Center/Linear Accelerator (in accordance with the need determination in 10A NCAC 14B .0318)

<u>Radiation Oncology Treatment Center Service Area</u>	<u>CON Beginning Review Date</u>
<u>15 (Cumberland, Bladen, Robeson, Sampson)</u>	<u>May 1, 2003</u>

(7) Fixed Dedicated Positron Emission Tomography (PET) Scanners (in accordance with the need determination in 10A NCAC 14B .0319)

<u>Positron Emission Tomography (PET) Scanners Planning Region</u>	<u>CON Beginning Review Date</u>
<u>HSA I</u>	<u>April 1, 2003</u>
<u>HSA II</u>	<u>August 1, 2003</u>
<u>HSA III</u>	<u>June 1, 2003</u>
<u>HSA V</u>	<u>March 1, 2003</u>
<u>HSA VI</u>	<u>July 1, 2003</u>

(8) Fixed Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10A NCAC 14B .0321)

<u>Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)</u>	<u>CON Beginning Review Date</u>
<u>1 (Cherokee, Clay)</u>	<u>April 1, 2003</u>
<u>1A (Macon)</u>	<u>June 1, 2003</u>
<u>2 (Graham, Jackson, Swain)</u>	<u>April 1, 2003</u>
<u>4 (Buncombe, Madison, Yancey)</u>	<u>August 1, 2003</u>
<u>5 (McDowell, Mitchell)</u>	<u>August 1, 2003</u>
<u>7 (Alexander, Burke, Caldwell, Catawba, Lincoln)</u>	<u>December 1, 2003</u>
<u>8 (Rutherford, Cleveland)</u>	<u>October 1, 2003</u>
<u>11 (Cabarrus, Rowan, Stanly)</u>	<u>October 1, 2003</u>
<u>13 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)</u>	<u>October 1, 2003</u>
<u>15 (Davidson, Guilford, Randolph, Rockingham)</u>	<u>December 1, 2003</u>
<u>16 (Hoke, Montgomery, Moore, Richmond, Scotland)</u>	<u>July 1, 2003</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>December 1, 2003</u>
<u>19 (Franklin, Wake)</u>	<u>November 1, 2003</u>

PROPOSED RULES

19A (Harnett, Johnston)	May 1, 2003
21 (Durham, Granville, Person, Vance, Warren)	March 1, 2003
23 (Carteret, Craven, Jones, Onslow, Pamlico)	March 1, 2003
24 (Wayne, Wilson)	September 1, 2003
25 (Beaufort, Bertie, Greene, Hyde, Lenoir, Martin, Pitt, Washington)	July 1, 2003

(9) Fixed Magnetic Resonance Imaging (MRI) Scanner Need Determination (in accordance with 10A NCAC 14B .0322)

<u>Magnetic Resonance Imaging Scanners</u>	
<u>Service Area</u>	<u>CON Beginning Review Date</u>
12 (Iredell)	December 1, 2003
13 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	April 1, 2003
15 (Davidson, Guilford, Randolph, Rockingham)	June 1, 2003
17 (Anson, Mecklenburg, Union)	June 1, 2003

(10) Mobile Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10A NCAC 14B .0323)

<u>Mobile Magnetic Resonance Imaging Scanners</u>	
<u>Planning Region</u>	<u>CON Beginning Review Date</u>
1 (HSAs I, II, III)	August 1, 2003
2 (HSAs IV, V, VI)	September 1, 2003

(11) Nursing Care Beds (in accordance with the need determination in 10A NCAC 14B .0324)

<u>County</u>	<u>CON Beginning Review Date</u>
Clay	April 1, 2003
Dare	November 1, 2003
Perquimans	May 1, 2003
Union	June 1, 2003

(12) Adult Care Home Beds (in accordance with the need determination in 10A NCAC 14B .0325)

<u>County</u>	<u>CON Beginning Review Date</u>
Beaufort	July 1, 2003
Camden	May 1, 2003
Cherokee	April 1, 2003
Currituck	May 1, 2003
Dare	November 1, 2003
Gates	May 1, 2003
Graham	April 1, 2003
Greene	September 1, 2003
Hyde	July 1, 2003
Jackson	April 1, 2003
Jones	September 1, 2003
Macon	June 1, 2003
Madison	August 1, 2003
Mitchell	August 1, 2003
Pender	September 1, 2003
Polk	August 1, 2003
Transylvania	August 1, 2003
Tyrrell	May 1, 2003
Washington	May 1, 2003

(13) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10A NCAC 14B .0326)

<u>County</u>	<u>CON Beginning Review Date</u>
Pamlico	November 1, 2003

PROPOSED RULES

(14) Hospice Home Care Program (in accordance with the need determination in 10A NCAC 14B .0327)

<u>County</u>	<u>CON Beginning Review Date</u>
Vance	November 1, 2003

(15) Hospice Inpatient Beds (in accordance with the need determination in 10A NCAC 14B .0328)

<u>County</u>	<u>CON Beginning Review Date</u>
Catawba	December 1, 2003
Forsyth	December 1, 2003
Gaston	June 1, 2003
Iredell	February 1, 2003
Mecklenburg	December 1, 2003
Richmond	May 1, 2003
Union	December 1, 2003

(16) Intermediate Care Facility Beds for the Mentally Retarded (in accordance with the need determination in 10A NCAC 14B .0333)

<u>Mental Health Planning Region</u>	<u>CON Beginning Review Date</u>
7 (Gaston-Lincoln-Cleveland)	August 1, 2003

(17) There are 10 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10A NCAC 14C .0202. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The 10 categories are:

- (a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (b) Category B. Proposals for nursing care beds; adult care home beds; new continuing care retirement communities applying for exemption under 10A NCAC 14B .0338(b) or .0339; and relocations of nursing care beds under 10A NCAC 14B .0338(d) or 10A NCAC 14B .0338(f).
- (c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities; transfers of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10A NCAC 14B .0338(e); transfers of psychiatric beds from State Psychiatric Hospitals to community facilities pursuant to 10A NCAC 14B .0342; transfers of ICF/MR beds from State Mental Retardation Centers to community facilities pursuant to Chapter 858 of the 1983 Sessions Laws.
- (d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.
- (e) Category E. Proposals for inpatient rehabilitation facilities; inpatient rehabilitation beds; licensed ambulatory surgical facilities; new operating rooms and relocations of existing operating rooms as defined in 10A NCAC 14B .0308(b).
- (f) Category F. Proposals for new Medicare-certified home health agencies or offices; new hospices; new hospice inpatient facility beds; and new hospice residential care facility beds.
- (g) Category G. Proposals for conversion of hospital beds to nursing care under 10A NCAC 14B .0338(a); and conversion of acute care hospitals to long-term acute care hospitals.
- (h) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).
- (i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10A NCAC 14B .0338(b) for exemption from need determinations in 10A NCAC 14B .0324 or 10A NCAC 14B .0339 for exemption from need determinations in 10A NCAC 14B .0325;

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relocations within the same county of existing health service facilities, beds or dialysis stations (excluding relocation of operating rooms as defined in 10A NCAC 14B .0308(b)) which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10A NCAC 14B .0336 by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of replacement equipment that does not result in an increase in the inventory; and any other proposal not included in Categories A through H and Category J.

(j) Category J. Proposals for demonstration projects.

- (18) A service, facility, or equipment for which a need determination is identified in Items (1) through (16) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as specified in these items, even though the following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (16) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10A NCAC 14B .0329 or 10A NCAC 14B .0330.

<u>CON Beginning Review Date</u>	<u>Review Categories for HSA I, II, III</u>	<u>Review Categories for HSA IV, V, VI</u>
January 1, 2003	--	--
February 1, 2003	A, C, E, F, G, H, I, J	--
March 1, 2003	--	A, C, E, G, H, I, J
April 1, 2003	B, C, D, H, I	D
May 1, 2003	--	B, C, E, H, I
June 1, 2003	A, B, C, F, H, I	--
July 1, 2003	--	A, B, C, H, I
August 1, 2003	B, C, E, H, I	--
September 1, 2003	--	B, C, E, H, I
October 1, 2003	A, C, D, H, I	D
November 1, 2003	--	A, B, C, F, H, I
December 1, 2003	C, F, H, I	--

For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is considered to be in HSA III.

- (19) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the month preceding the "CON Beginning Review Date." In instances when the 15th day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0303 MULTI-COUNTY GROUPINGS

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

HEALTH SERVICE AREAS (HSA)

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

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

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

MENTAL HEALTH PLANNING AREAS

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

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

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

MENTAL HEALTH PLANNING REGIONS (AREA NUMBER AND CONSTITUENT COUNTIES)

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

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

RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS

<u>Area Number</u>	<u>Constituent Counties</u>

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

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

AMBULATORY SURGICAL FACILITY PLANNING AREAS

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

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

MAGNETIC RESONANCE IMAGING SCANNERS PLANNING AREAS

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

(g) Mobile Magnetic Resonance Imaging Scanners Planning Regions. The DHHS has assigned the HSAs as outlined in 10A NCAC 14B .0303(a) to the following Mobile Magnetic Resonance Imaging scanners planning regions for purposes of the State Medical Facilities Plan.

MOBILE MAGNETIC RESONANCE IMAGING SCANNERS PLANNING REGIONS

<u>Region Number</u>	<u>Constituent HSAs</u>
1	HSAs I, II, III
2	HSAs IV, V, VI

(h) Positron Emission Tomography (PET) Scanners Planning Regions. The DHHS has assigned the HSAs as outlined in 10A NCAC 14B .0303(a) to the following Positron Emission Tomography (PET) Scanners Planning Regions for purposes of the State Medical Facilities Plan.

POSITRON EMISSION TOMOGRAPHY (PET) SCANNERS PLANNING REGIONS

<u>Region Number</u>	<u>Constituent HSAs</u>
1	HSA I
2	HSA II
3	HSA III
4	HSA IV
5	HSA V
6	HSA VI

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(i) Gamma Knife Planning Regions. The DHHS has assigned the HSAs as outlined in 10A NCAC 14B .0303(a) to the following Gamma Knife Planning Regions for purposes of the State Medical Facilities Plan.

GAMMA KNIFE PLANNING REGIONS

<u>Region Number</u>	<u>Constituent HSAs</u>
<u>1</u>	<u>HSAs I, II, III</u>
<u>2</u>	<u>HSAs IV, V, VI</u>

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

10A NCAC 14B .0304 SERVICE AREAS AND PLANNING AREAS

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

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

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10A NCAC 14B .0303(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10A NCAC 14B .0303(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10A NCAC 14B .0303(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are the multi-county groupings as defined in 10A NCAC 14B .0303(f).

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

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

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

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

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

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10A NCAC 14B .0303(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10A NCAC 14B .0303(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10A NCAC 14B .0303(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10A NCAC 14B .0303(b).

(o) A heart-lung bypass machine's service area is the heart-lung bypass machine planning area in which the heart-lung bypass machine is located. The heart-lung bypass machine planning areas are the hospital service systems, as defined in 10A NCAC 14B .0304(a).

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

(q) A unit of shared fixed cardiac catheterization and cardiac angioplasty equipment's service area is the shared fixed cardiac catheterization and cardiac angioplasty planning area in which the equipment is located. The shared fixed cardiac catheterization and cardiac angioplasty planning areas are the hospital service systems, as defined in 10A NCAC 14B .0304(a).

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(r) A positron emission tomography scanner's service area and planning region is the health service area (HSA) in which the scanner is located and the planning region as defined in 10A NCAC 14B .0303(h). The health service areas are the multi-county groupings as defined in 10A NCAC 14B .0303(a).

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

(t) An operating room's service area is the ambulatory surgical facility planning area in which the operating room is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10A NCAC 14B .0303(e).

(u) A mobile magnetic resonance imaging scanner's service area is the planning region as defined in 10A NCAC 14B .0303(g). The health service areas are the multi-county groupings as defined in 10A NCAC 14B .0303(a).

(v) A gamma knife's service area is the planning region as defined in 10A NCAC 14B .0303(i). The health service areas are the multi-county groupings as defined in 10A NCAC 14B .0303(a).

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

10A NCAC 14B .0305 REALLOCATIONS AND ADJUSTMENTS

(a) REALLOCATIONS

(1) Reallocations shall be made only to the extent that need determinations in 10A NCAC 14B .0306, through .0333 indicate that need exists after the inventories are revised and the need determinations are recalculated.

(2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.

(3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Dialysis Report.

(4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny the application has been appealed shall not be reallocated until the appeal is resolved.

(A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a)(3) of this Rule.

(B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.

(5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed

(B) the date on which an appeal of the withdrawal is finally resolved against the holder; or

(C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

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

(6) Need Determinations for which No Applications are Received

(A) Services or beds with scheduled review in the Calendar Year on or before September 1: The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.

(B) Services or beds with scheduled review in the Calendar Year after September 1: Except for dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of new applications.

(7) Need Determinations not Awarded because Application Disapproved

PROPOSED RULES

- (A) Disapproval in the Calendar Year prior to August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.
- (B) Disapproval in the Calendar Year on or After August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.
- (8) Reallocation of Decertified ICF/MR Beds. If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility may be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section after consideration of recommendations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for any reallocated beds pursuant to Subparagraph (a)(5) of this rule.

(b) CHANGES IN NEED DETERMINATIONS

- (1) The need determinations in 10A NCAC 14B .0306 through 10A NCAC 14B .0333 shall be revised continuously by the Medical Facilities Planning Section throughout the calendar year to reflect all changes in the inventories of:
 - (A) the health services listed at G.S. 131E-176 (16)f;
 - (B) health service facilities;
 - (C) health service facility beds;
 - (D) dialysis stations;
 - (E) the equipment listed at G.S. 131E-176 (16)f1;
 - (F) mobile medical equipment; and
 - (G) operating rooms as defined in 10A NCAC 14B .0308(b).as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10A NCAC 14B .0306 through .0333 shall not be reduced if the relevant inventory is adjusted upward 60 days or less prior to applicable certificate of need application due dates.
- (2) Inventories shall be updated to reflect:
 - (A) decertification of Medicare-certified home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;
 - (B) delicensure of health service facilities and health service facility beds;
 - (C) demolition, destruction, or decommissioning of equipment as listed at G.S. B1E-176(16) f1 and G. S. 131E-176(16) (s);
 - (D) elimination or reduction of a health service as listed at G.S. 131E-176(16) (f);
 - (E) addition or reduction in operating rooms as defined in 10A NCAC 14B .0308(b);
 - (F) psychiatric beds licensed pursuant to G.S. 131E-184(c);
 - (G) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
 - (H) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
- (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10A NCAC 14B .0306 through 10A NCAC 14B .0333 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.
- (4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0306 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)

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

Acute Care

PROPOSED RULES

<u>Hospital Service System</u>	<u>Bed Need</u>
5	<u>Determination</u> Cannon Memorial Hospital

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Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0307 INPATIENT REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

It is determined that there is no need for additional inpatient rehabilitation beds anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0308 OPERATING ROOM NEED DETERMINATIONS (REVIEW CATEGORY E)

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

Ambulatory Surgery	<u>Counties</u>	Operating Room Need
<u>Service Area</u> Hoke, Lee, Montgomery, Moore, Richmond, Scotland	6	<u>Determination</u> 27

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

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0309 OPEN HEART SURGERY SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional open heart surgery services anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

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10A NCAC 14B .0310 HEART-LUNG BYPASS MACHINE NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional heart-lung bypass machines anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0311 FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)

(a) It is determined that there is a need for seven additional fixed units of cardiac catheterization/angioplasty equipment in four counties as follows. It is determined that there is no need for additional fixed units of cardiac catheterization/angioplasty equipment anywhere else in the State.

<u>County</u>	Fixed Cardiac Catheterization/Angioplasty Equipment Need Determination
1 Guilford New Hanover Wake	Forsyth 1 2 3

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(b) Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac catheterization equipment, as that term is defined in 10A NCAC 14C .1601(14).

(c) Mobile cardiac catheterization equipment, as defined in 10A NCAC 14C .1601(14), and services shall only be approved for development on hospital sites.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0312 SHARED FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)

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

PROPOSED RULES

<u>Hospital Service System</u>	<u>Shared Fixed Cardiac Catheterization/Angioplasty Equipment Need Determination</u>	Randolph
Hospital _____	_____	1

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

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0313 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
It is determined that there is no need for additional burn intensive care services anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0314 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

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

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

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0315 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

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

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

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0316 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)
It is determined that there is no need for additional lithotripters anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0317 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is a need for one gamma knife in Gamma Knife Planning Region 2. It is determined that there is no need for additional gamma knives anywhere else in the State.

<u>Gamma Knife Planning Region</u> 2 (HSAs IV, V, VI)	<u>Gamma Knife Need Determination</u> 1
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Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0318 RADIATION ONCOLOGY TREATMENT CENTER/LINEAR ACCELERATOR NEED DETERMINATIONS (REVIEW CATEGORY H)

It is determined that there is a need for one additional Radiation Oncology Treatment Center in one Radiation Oncology Treatment Center Service Area as follows. It is determined that there is no need for an additional radiation oncology treatment center anywhere else in the State.

<u>Radiation Oncology Treatment Center Service Area</u>	<u>Radiation Oncology Treatment Center Need Determination</u>
15 (Cumberland, Bladen, Robeson, Sampson)	1

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0319 FIXED DEDICATED POSITRON EMISSION TOMOGRAPHY (PET) SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

PROPOSED RULES

- (a) It is determined that there is a need for nine fixed dedicated PET scanners in five PET Scanner Planning Regions as follows. It is determined that there is no need for additional fixed dedicated PET scanners anywhere else in the State.
- (b) Dedicated PET Scanners are scanners used solely for PET imaging.

PET Scanner Planning Region	Fixed Dedicated PET Scanner Need Determination
I	1
II	2
III	3
V	2
VI	1

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0320 MOBILE DEDICATED POSITRON EMISSION TOMOGRAPHY (PET) SCANNER NEED DETERMINATION (REVIEW CATEGORY H)

- (a) It is determined that there is no need for additional mobile dedicated PET Scanners anywhere in the State.
- (b) Dedicated PET Scanners are scanners used solely for PET imaging.
- (c) Mobile PET Scanner means a PET scanner and transporting equipment which is moved to provide services at two or more host facilities.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0321 FIXED MAGNETIC RESONANCE IMAGING (MRI) SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

- (a) It is determined that there is a need for eighteen additional fixed MRI Scanners based on fixed MRI Scanner utilization in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner anywhere else in the State, other than the additional scanners provided in 10A NCAC 14B .0322.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	Fixed MRI Scanners Need Determination
1 (Cherokee, Clay)	1
1A (Macon)	1
2 (Graham, Jackson, Swain)	1
4 (Buncombe, Madison, Yancey)	1
5 (McDowell, Mitchell)	1
7 (Alexander, Burke, Caldwell, Catawba, Lincoln)	1
8 (Rutherford, Cleveland)	1
11 (Cabarrus, Rowan, Stanly)	1
13 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	1
15 (Davidson, Guilford, Randolph, Rockingham)	1
16 (Hoke, Montgomery, Moore, Richmond, Scotland)	1
17 (Anson, Mecklenburg, Union)	1
19 (Franklin, Wake)	1
19A (Harnett, Johnston)	1
21 (Durham, Granville, Person, Vance, Warren)	1
23 (Carteret, Craven, Jones, Onslow, Pamlico)	1
24 (Wayne, Wilson)	1
25 (Beaufort, Bertie, Greene, Hyde, Lenoir, Martin, Pitt, Washington)	1

- (b) MRI Scanners. "Fixed MRI scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10A NCAC 14C .2701(5).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0322 FIXED MAGNETIC RESONANCE IMAGING (MRI) SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)

PROPOSED RULES

(a) It is determined that there is a need for five additional fixed MRI Scanners based on utilization of mobile MRI Scanners in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner anywhere else in the State, other than the additional scanners provided in 10A NCAC 14B .0321.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	Fixed MRI Scanners Need Determination
12 (Iredell)	<u>1</u>
13 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	<u>1</u>
15 (Davidson, Guilford, Randolph & Rockingham)	<u>2</u>
17 (Anson, Mecklenburg, Union)	<u>1</u>

(b) MRI Scanners. "Fixed MRI scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10A NCAC 14C .2701(5).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0323 MOBILE MAGNETIC RESONANCE IMAGING (MRI) SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

(a) It is determined that there is a need for two mobile MRI scanners in Mobile MRI Scanners Planning Regions as follows. It is determined that there is no need for additional mobile MRI scanners anywhere else in the state.

Mobile Magnetic Resonance Imaging Scanners Planning Region	Mobile MRI Scanner Need Determination
1 (HSAs I, II, III)	<u>1</u>
2 (HSAs IV, V, VI)	<u>1</u>

(b) Mobile MRI Scanners. "Mobile MRI scanners" are MRI Scanners, as defined in 10A NCAC 14C .2701(5).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0324 NURSING CARE BED NEED DETERMINATIONS (REVIEW CATEGORY B)

It is determined that the counties listed in this Rule need additional Nursing Care beds as specified. It is determined that there is no need for additional Nursing Care beds anywhere else in the State.

County	Number of New Nursing Care Beds Needed
<u>Clay</u>	<u>10</u>
<u>Dare</u>	<u>40</u>
<u>Perquimans</u>	<u>10</u>
<u>Union</u>	<u>60</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0325 ADULT CARE HOME BED NEED DETERMINATIONS (REVIEW CATEGORY B)

It is determined that the counties listed in this Rule need additional Adult Care Home beds as specified. It is determined that there is no need for additional Adult Care Home beds anywhere else in the State.

County	Number of Adult Care Home Beds Needed
<u>Beaufort</u>	<u>50</u>
Camden	10
<u>Cherokee</u>	<u>130</u>
Currituck	10
<u>Dare</u>	<u>40</u>
Gates	10
<u>Graham</u>	<u>10</u>
Greene	20
<u>Hyde</u>	<u>30</u>

PROPOSED RULES

<u>Jackson</u>	<u>30</u>
<u>Jones</u>	<u>30</u>
<u>Macon</u>	<u>80</u>
<u>Madison</u>	<u>10</u>
<u>Mitchell</u>	<u>80</u>
<u>Pender</u>	<u>80</u>
<u>Polk</u>	<u>30</u>
<u>Transylvania</u>	<u>50</u>
<u>Tyrrell</u>	<u>20</u>
<u>Washington</u>	<u>20</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0326 MEDICARE -CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is a need for one Medicare-certified home health agency or office in Pamlico County. It is determined that there is no need for additional Medicare-certified home health agencies or offices anywhere else in the State.

County	Number of New Home Health Agencies/ Offices Needed	Pamlico
<u>1</u>		

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Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0327 HOSPICE HOME CARE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is a need for one additional Hospice Home Care Program in Vance County. It is determined that there is no need for additional Hospice Home Care Programs anywhere else in the State.

County	Number of New Hospice Home Care Programs Needed
<u>Vance</u>	<u>1</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0328 HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that the counties listed in this Rule need additional hospice inpatient beds as specified. It is determined that there is no need for additional hospice inpatient beds anywhere else in the State.

County	Number of Hospice Inpatient Beds Needed	Catawba
<u>5</u>		
<u>Forsyth</u>	<u>6</u>	
<u>Gaston</u>	<u>6</u>	
<u>Iredell</u>	<u>3</u>	
<u>Mecklenburg</u>	<u>11</u>	
<u>Richmond</u>	<u>2</u>	
<u>Union</u>	<u>3</u>	

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Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0329 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING APRIL 1, 2003

(a) The Medical Facilities Planning Section (MEPS) shall determine need for new dialysis stations twice during calendar year 2003, and shall make a report of such determinations available to all who request it. The first report shall be called the North Carolina January 2003 Semiannual Dialysis Report (SDR). Data to be used for these determinations and their sources are as follows:

- (1) Numbers of dialysis patients as of June 30, 2002, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MEPS records.

PROPOSED RULES

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

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

(1) County Need (using the trend line ending with 12/31/01 data):

- (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1997 to the end of 2001 is multiplied by the county's June 30, 2002 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total June 30, 2003 patients.
- (B) The percent of each county's total patients who were home dialysis patients on June 30, 2002 is multiplied by the county's projected total June 30, 2003 patients, and the product is subtracted from the county's projected total June 30, 2003 patients. The remainder is the county's projected June 30, 2003 in-center dialysis patients.
- (C) The projected number of each county's June 30, 2003 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2003 in-center dialysis stations.
- (D) From each county's projected number of June 30, 2003 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2003 projected station surplus or deficit.
- (E) If a county's June 30, 2003 projected station deficit is 10 or greater and the January 2003 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2003 county station need determination is the same as the June 30, 2003 projected station deficit. If a county's June 30, 2003 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's June 30, 2003 station need determination is zero.

(2) Facility Need. A dialysis facility located in a county for which the result of the County Need methodology is zero in the January 2003 Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the January 2003 SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center dialysis patients reported in the July 2002 SDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the January 2003 SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate;
 - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
 - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by 6 (the number of months from June 30, 2002 until December 31, 2002) for the January 2003 SDR;
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the January 2003 SDR and that product is added to such reported number of in-center patients; and
 - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified stations as recorded in the January 2003 SDR and the number of pending new stations for which a certificate of need has been issued. The remainder is the number of stations needed; and
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the January 2003 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the April 1, 2003 Review Period shall be as follows:

Data for	Due Date for	Publication	Receipt of CON	Beginning Review
Period Ending	SEKC Report	of SDR	Applications	Date
June 30, 2002	Nov. 12, 2002	Jan. 2, 2003	March 17, 2003	April 1, 2003

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) Home patients shall not be included in determination of need for new stations.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0330 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING OCTOBER 1, 2003

PROPOSED RULES

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar year 2003, and shall make a report of such determinations available to all who request it. The second report shall be called the North Carolina July 2003 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients as of December 31, 2002, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

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

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

- (1) County Need (using the trend line ending with 12/31/02 data):
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1998 to the end of 2002 is multiplied by the county's December 31, 2002 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total December 31, 2003 patients;
 - (B) The percent of each county's total patients who were home dialysis patients on December 31, 2002 is multiplied by the county's projected total December 31, 2003 patients, and the product is subtracted from the county's projected total December 31, 2003 patients. The remainder is the county's projected December 31, 2003 in-center dialysis patients;
 - (C) The projected number of each county's December 31, 2003 in-center patients is divided by 3.2. The quotient is the projection of the county's December 31, 2003 in-center dialysis stations;
 - (D) From each county's projected number of December 31, 2003 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's December 31, 2003 projected station surplus or deficit; and
 - (E) If a county's December 31, 2003 projected station deficit is 10 or greater and the July 2003 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the December 31, 2003 county station need determination is the same as the December 31, 2003 projected station deficit. If a county's December 31, 2003 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's December 31, 2003 station need determination is zero.
- (2) Facility Need. A dialysis facility located in a county for which the result of the County Need methodology is zero in the July 2003 SDR is determined to need additional stations to the extent that:
 - (A) Its utilization, reported in the July 2003 SDR, is 3.2 patients per station or greater;
 - (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center dialysis patients reported in the January 2003 SDR (SDR₁) is subtracted from the number of in-center dialysis patients reported in the July 2003 SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate;
 - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
 - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by 12 (the number of months from December 31, 2002 until December 31, 2003) for the July 2003 SDR;
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the July 2003 SDR and that product is added to such reported number of in-center patients; and
 - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified stations as recorded in the July 2003 SDR and the number of pending new stations for which a certificate of need has been issued. The remainder is the number of stations needed; and
 - (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the July 2003 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the October 1, 2003 Review Period shall be as follows:

Data for	Due Date for	Publication	Receipt of	Beginning
Period Ending	SEKC Report	of SDR	CON Applications	Review Date
Dec. 31, 2002	May 12, 2003	July 1, 2003	September 15, 2003	October 1, 2003

PROPOSED RULES

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) Home patients shall not be included in determination of need for new stations.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0331 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)

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

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0332 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)

(a) It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adolescents anywhere in the State.

(b) It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adults anywhere in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0333 INTERMEDIATE CARE FACILITY BEDS FOR THE MENTALLY RETARDED (ICF/MR) NEED DETERMINATION (REVIEW CATEGORY C)

It is determined that there is a need for 22 ICF/MR beds in the Gaston-Union-Cleveland mental health planning area. The ICF/MR beds shall be used for medically fragile individuals, regardless of age. It is determined that there is no need for additional ICF/MR beds anywhere else in the State.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0334 RESERVED FOR FUTURE CODIFICATION

10A NCAC 14B 0335 RESERVED FOR FUTURE CODIFICATION

10A NCAC 14B .0336 EXEMPTION FROM PLAN PROVISIONS FOR CERTAIN ACADEMIC MEDICAL CENTER TEACHING HOSPITAL PROJECTS

(a) Exemption from the provisions of 10A NCAC 14B .0306 through .0333 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:

- (1) 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
- (2) 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
- (3) necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(b) 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.

(c) 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.

(d) 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:

- | | | |
|-----|---|----------------------------|
| (1) | <u>The North Carolina Baptist Hospitals</u> | <u>February 16, 1983;</u> |
| (2) | <u>Duke University Hospital</u> | <u>July 21, 1983;</u> |
| (3) | <u>University of North Carolina Hospitals</u> | <u>August 8, 1983; and</u> |
| (4) | <u>Pitt County Memorial Hospital</u> | <u>August 8, 1983.</u> |

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0337 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 10A NCAC 13B .3102(d) and Section .6200.

PROPOSED RULES

(b) 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 10A NCAC 14B .0306.

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

(c) 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 demonstrate the need for maintaining the acute care bed capacity proposed within the application.

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

(d) 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 10A NCAC 14C .1703(2).

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0338 POLICIES FOR NURSING CARE FACILITIES

(a) Provision Of Hospital-Based Nursing Care.

(1) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and in 10A NCAC 14C .1100, to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based nursing care beds without regard to determinations of need in 10A NCAC 14B .0324 if the hospital:

- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2003; and
- (B) on January 1, 2003, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Health and Human Services determines that the hospital is meeting the conditions outlined in 10A NCAC 14B .0338(a).

(2) "Hospital-based nursing care" is defined as nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Nursing care beds developed under 10A NCAC 14B .0338(a) are intended to provide placement for residents only when placement in other nursing care beds is unavailable in the geographic area. Hospitals which develop nursing care beds under 10A NCAC 14B .0338(a) shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units, shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

(3) For purposes of 10A NCAC 14B .0338(a), beds in hospital-based nursing care shall be certified as a "distinct part" as defined by the Centers for Medicare and Medicaid Services. Nursing Care beds in a "distinct part" shall be converted from the existing licensed acute care bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10A NCAC 14B .0337(b), without regard to the acute care bed need shown in 10A NCAC 14B .0306.

(4) A certificate of need issued for a hospital-based nursing care unit shall remain in force as long as the following conditions are met:

PROPOSED RULES

- (A) the nursing care beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
 - (B) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law; and
 - (C) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the nursing care unit.
 - (5) The granting of beds for hospital-based nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.
 - (6) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:
 - (A) applies for and receives a certificate of need for nursing care bed need determinations in 10A NCAC 14B .0324; or
 - (B) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
 - (C) currently operates nursing care beds under the Federal Swing Bed Program (P.L. 96-499),
such hospital shall not be eligible to apply for a certificate of need for hospital-based nursing care beds under 10A NCAC 14B .0338(a). Hospitals designated by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated nursing care beds under provisions of G.S. 131E-175 through G.S. 131E-190, may apply to develop beds under 10A NCAC 14B .0338(a). However, such hospitals shall not develop nursing care beds both to meet needs determined in 10A NCAC 14B .0324 and 10A NCAC 14B .0338(a).
 - (7) Beds certified as a "distinct part" under 10A NCAC 14B .0338(a) shall be counted in the inventory of existing nursing care beds and used in the calculation of unmet nursing care bed need for the general population of a planning area. Applications for certificates of need pursuant to 10A NCAC 14B .0338(a) shall be accepted only for the February 1 review cycle for Health Service Areas I, II and III and for the March 1 review cycle for Health Service Areas IV, V, VI as defined in 10A NCAC 14B .0308(a). Nursing care beds awarded under 10A NCAC 14B .0338(a) shall be deducted from need determinations for the county as shown in 10A NCAC 14B .0324. The Department of Health and Human Services shall monitor this program and ensure that patients affected by 10A NCAC 14B .0338(a) are receiving services as indicated by their care plan, and that conditions under which the certificate of need was granted are being met.
- (b) Plan Exemption For Continuing Care Retirement Communities.
- (1) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in 10A NCAC 14B .0324. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:
 - (A) will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
 - (i) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms; and
 - (ii) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort;
 - (B) will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract;
 - (C) reflects the number of nursing care beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care; and
 - (D) will not be certified for participation in the Medicaid program.
 - (2) One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. All nursing care beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.
- (c) Determination Of Need For Additional Nursing Care Beds In Single Provider Counties. When a nursing care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing care beds in order to bring the minimum number of nursing care beds available within the county to no more than 80 nursing care beds without regard to the nursing care bed need determination for that county as listed in 10A NCAC 14B .0324.

PROPOSED RULES

(d) Relocation Of Certain Nursing Facility Beds. A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part 1, provided that the conditions set forth in 10A NCAC 14B .0338(d) and in 10A NCAC 14C .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
 - (A) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
 - (B) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (C) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (D) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
 - (E) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10A NCAC 14B .0324 shall be granted to a nursing facility for purposes of relocating existing licensed nursing care beds to another county provided that it complies with all of the criteria listed in 10A NCAC 14B .0338(d)(1)(A) through (E).
- (3) Any certificate of need issued under 10A NCAC 14B .0338(d) shall be subject to the following conditions:
 - (A) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make discharge arrangements acceptable to residents not desiring to transfer to the new facility;
 - (B) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
 - (C) subsequent to providing the letter to the Licensure and Certification Section described in 10A NCAC 14B .0338(d)(3)(B), the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

(e) Transfer Of Nursing Facility Beds From State Psychiatric Hospital Nursing Facilities To Community Facilities.

- (1) Beds in State Psychiatric Hospitals that are certified as nursing facility beds may be relocated to licensed nursing facilities. However, before nursing facility beds are transferred out of the State Psychiatric Hospitals, services shall be available in the community. State hospital nursing facility beds that are relocated to licensed nursing facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Licensed nursing facilities proposing to operate transferred nursing facility beds shall commit to serve the type of residents who are normally placed in nursing facility beds at the State psychiatric hospitals. To help ensure that relocated nursing facility beds will serve those persons who would have been served by State psychiatric hospitals in nursing facility beds, a certificate of need application to transfer nursing facility beds from a State hospital shall include a written memorandum of agreement between the Director of the applicable State psychiatric hospital; the Chief of Adult Community Mental Health Services and the Chief of Institutional Services in the Division of MH/DD/SAS; the Secretary of Health and Human Services; and the person submitting the proposal.
- (2) 10A NCAC 14B .0338(e) does not allow the development of new nursing care beds. Nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10A NCAC 14B .0338(e)(1) shall be excluded from the inventory.

(f) Relocation Of Nursing Facility Beds. Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in 10A NCAC 14B .0338(d). Certificate of need applicants proposing to relocate licensed nursing facility beds to contiguous counties shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins; and
- (2) demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0339 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES - ADULT CARE HOME BEDS

(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for adult care without regard to the adult care home bed need shown in 10A NCAC 14B .0325. To qualify for such exemption, applications for certificates of need shall show that the proposed adult care home bed capacity:

- (1) will only be developed concurrently with, or subsequent to, construction on the same site of independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms;

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- (2) will provide for the provision of nursing services, medical services, or other health related services as required for licensure by the Department of Insurance
 - (3) will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing or adult care unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the adult care home unit at the time the other spouse or sibling moves into a non-nursing or adult care unit, or when the medical condition requiring nursing or adult care home care was not known to exist or be imminent when the individual became a party to the continuing care contract;
 - (4) reflects the number of adult care home beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional adult care home care; and
 - (5) will not participate in the Medicaid program or serve State-County Special Assistance recipients.
- (b) One half of the adult care home beds developed under this exemption shall be excluded from the inventory used to project adult care home bed need for the general population.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0340 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES

(a) Need Determination Upon Termination of County's Sole Medicare-Certified Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of Medicare-Certified home health services and to decertify the office; and

- (1) the agency is the only Medicare-Certified home health agency with an office physically located in the county; and
- (2) the agency is not being lawfully transferred to another entity;

need for a new Medicare-Certified home health agency office in the county is thereby established through this Paragraph. Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one Medicare-Certified home health agency office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to Medicare-Certified home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

(b) Need Determination for at Least One Medicare-Certified Home Health Agency per County. When a county has no Medicare-Certified home health agency office physically located within the county's borders, need for a new Medicare-Certified home health agency office in the county is thereby established through this Paragraph.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0341 POLICY FOR RELOCATION OF DIALYSIS STATIONS

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations to contiguous counties shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Dialysis Report, and
- (2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Dialysis Report.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

10A NCAC 14B .0342 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES

(a) Transfer of Psychiatric Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities through the Certificate of Need process. However, before psychiatric beds are transferred out of the State psychiatric hospitals, services and programs shall be available in the community. State hospital psychiatric beds which are relocated to community facilities shall be closed within ninety days following the date the transferred psychiatric beds become operational in the community. Facilities proposing to operate transferred psychiatric beds, shall submit an application to the Certificate of Need Section of the Department of Health and Human Services and commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated psychiatric beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer psychiatric beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the psychiatric beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10A NCAC 14B .0337(b) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

PROPOSED RULES

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

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10A NCAC 14B .0343 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for chemical dependency treatment beds, as defined in G.S. 131E-176(5b), shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

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10A NCAC 14B .0344 POLICY FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for intermediate care facility beds for the mentally retarded shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

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SUBCHAPTER 14C - CERTIFICATE OF NEED REGULATIONS

SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY OR ADULT CARE HOME SERVICES

10A NCAC 14C .1101 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall clearly 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 ~~a 45 mile radius of 45 minutes normal automobile driving time (one-way) from~~ the facility, with the exception that this standard shall be waived for applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are ~~located in isolated or remote locations~~, fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

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

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

(f) An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10A NCAC 13D or 10A NCAC 13F, whichever is applicable.

Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234.

SECTION .1500 - CRITERIA AND STANDARDS FOR HOSPICES, HOSPICE INPATIENT FACILITIES, AND HOSPICE RESIDENTIAL CARE FACILITIES

10A NCAC 14C .1501 DEFINITIONS

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

- (1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.
- (2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.
- (3) "Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (4) "Continuous care" means care as defined in 42 CFR 418.204, the Hospice Medicare Regulations.
- (5) "Home-like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.
- (6) "Homemaker services" means services provided to assist the patient with personal care, maintenance of a safe and healthy environment and implementation of the patient's care plan.
- (7) "Hospice" means any coordinated program of home care as defined in G.S. 131E-176(13a).

PROPOSED RULES

- (8) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).
- (9) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).
- (10) "Hospice service area" ~~means means, for residential care facilities,~~
 - (a) ~~the single county in which the hospice or hospice inpatient facility will be established if the application is submitted to address the need identified for a single county as set forth in the applicable State Medical Facilities Plan (SMFP); or~~
 - (b) ~~the county in which the hospice inpatient facility is located and the contiguous counties for which the hospice inpatient facility will provide services if the application is submitted to address the need identified for a contiguous grouping of counties as defined in the applicable SMFP; or~~
 - (c) the county in which the hospice residential care facility will be located and the contiguous counties for which the hospice residential care facility will provide services.
- (11) "Hospice services" means services as defined in G.S. 131E-201.
- (12) "Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (13) "Interdisciplinary team" means personnel as defined in G.S. 131E-201.
- (14) "Palliative care" means treatment as defined in G.S. 131E-201.
- (15) "Respite care" means care provided as defined in 42 CFR 418.98.

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

10A NCAC 14C .1502 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to develop a hospice shall complete the application form for Hospice Services. An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.
- (b) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide the following information:
 - ~~(1) the county or counties included in the hospice service area for the proposed project in accordance with the definition in Rule .4201 of this Section;~~
 - ~~(2) the annual unduplicated number of hospice patients projected to be served in each of the first two years following completion of the project and the methodology and assumptions used to make the projections;~~
 - ~~(3) the projected number of hospice patients to be served by quarter for in each of the first 24 months following completion of the project and the methodology and assumptions used to make the projections;~~
 - ~~(4) the projected number of patient care days, by level of care (i.e., routine home care, respite care, and inpatient care), by quarter, to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make the projections shall be clearly stated;~~
 - ~~(5) the projected number of hours of continuous care to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make these projections;~~
 - ~~(6) the projected average annual cost per hour of continuous care for each of the first two operating years following completion of the project and the methodology and assumptions used to make the projections;~~
 - ~~(7) the projected average annual cost per patient care day, by level of care (i.e., routine home care, respite care, and inpatient care), for each of the first two operating years following completion of the project and the methodology and assumptions used to project the average annual cost;~~
 - ~~(8) documentation of attempts made to establish working relationships with sources of referrals to the hospice services and copies of proposed agreements for the provision of inpatient care.~~
- (c) An applicant proposing to develop a hospice shall also provide documentation that the hospice shall be licensed and shall be certified for participation in the Medicare program within one year after issuance of the certificate of need.
- (d) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:
 - (1) a description of the means by which hospice services shall be provided in the patient's own home;
 - (2) copies of the proposed contractual agreements, with a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services in the patient's own home;
 - (3) a copy of the admission policies, including the criteria that shall be used to select persons for admission and to assure that terminally ill patients are served in their own homes as long as possible; and
 - (4) documentation that a home-like setting shall be provided in the facility.

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

10A NCAC 14C .1503 PERFORMANCE STANDARDS

- (a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:
 - (1) the average occupancy rate of the licensed beds in the facility is projected to be at least 50% for the last six months of the first operating year following completion of the project;

PROPOSED RULES

- (2) the average occupancy rate for the licensed beds in the facility is projected to be at least 65% for the second operating year following completion of the project; and
 - (3) if the application is submitted to address the need for a hospice residential care ~~facility or hospice inpatient facility~~ for a contiguous grouping of counties, facility, each existing facility which is located in the hospice service area and which has licensed beds of the type proposed by the applicant attained an occupancy rate of at least 65% for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.
- (b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential care facility shall document that the average occupancy of the licensed hospice inpatient and hospice residential care facility beds in its existing facility was at least 65% for the nine months immediately preceding the submittal of the proposal.
- (c) An applicant proposing to develop a hospice shall demonstrate that no less than 80% of the total number of days of hospice care furnished to Medicaid and Medicare patients will be provided in the patient's residence in accordance with 42 CFR 418.302(f)(2).

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

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

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to increase stations in an existing certified facility or relocated stations must provide the following information:

- (1) Utilization rates;
- (2) Mortality rates;
- (3) The number of patients that are home trained and the number of patients on home dialysis;
- (4) The number of transplants performed or referred;
- (5) The number of patients currently on the transplant waiting list;
- (6) Hospital admission rates, by admission diagnosis, i.e., dialysis related versus non-dialysis related;
- (7) The number of patients with infectious disease, i.e., hepatitis and AIDS, and the number converted to infectious status during last calendar year.

(b) An applicant that proposed to increase the number of stations in an existing facility, or establish a new dialysis station, or the relocation of existing dialysis stations must provide the information requested on the End Stage Renal Disease (ESRD) Treatment application form to include the following:

- (1) A signed written agreement with an acute care hospital that specifies the relationship with the dialysis facility and describes the services that the hospital will provide to patients of the dialysis facility. The agreement must comply with 42 C.F.R., Section 405.2100.
- (2) A written agreement with a transplantation center describing the relationship with the dialysis facility and the specific services that the transplantation center will provide to patients of the dialysis facility. The agreements must include at least the following:
 - (A) timeframe for initial assessment and evaluation of patients for transplantation,
 - (B) composition of the assessment/evaluation team at the transplant center,
 - (C) method for periodic re-evaluation,
 - (D) criteria by which a patient will be evaluated and periodically re-evaluated for transplantation, and
 - (E) signatures of the duly authorized persons representing the facilities and the agency providing the services.
- (3) Documentation that the water supply will comply with 42 C.F.R., Section 405.2100.
- (4) Documentation of standing service from a power company and back-up capabilities.
- (5) The location of the site on which the services are to be operated. If such site is neither owned by nor under option to the ~~proponent~~, applicant, the ~~proponent~~ applicant must provide a written commitment to diligently pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.
- (6) Documentation that the services will be provided in conformity with applicable laws and regulations pertaining to staffing, fire safety equipment, physical environment, and other relevant health and safety requirements.
- (7) The projected patient origin for the services. All assumptions, including the specific methodology by which patient origin is projected, must be clearly stated.
- (8) For new facilities, documentation that at least 80 percent of the anticipated patient population resides within 30 miles of the proposed ~~facility with the exception of remote area facilities as defined in the State Medical Facilities Plan-facility.~~

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

10A NCAC 14C .2203 PERFORMANCE STANDARDS

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

PROPOSED RULES

- (b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the ~~first day of operation~~ end of the first operating year of the additional stations.
- (c) An applicant shall provide all assumptions, including the specific methodology by which patient utilization is projected.

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

SECTION .2400 - CRITERIA AND STANDARDS FOR INTERMEDIATE CARE FACILITY/MENTALLY RETARDED (ICF/MR)

10A NCAC 14C .2403 PERFORMANCE STANDARDS

- (a) An applicant proposing to add ICF/MR beds to an existing facility shall not be approved unless the overall average occupancy, over the six months immediately preceding the submittal of the application, of the total number of ICF/MR beds within the facility in which the new beds are to be operated was at least 90 percent.
- (b) An applicant proposing to establish new ICF/MR beds shall not be approved unless occupancy is projected to be at least 90 percent for the total number of ICF/MR beds proposed to be operated in the entire facility, no later than one year following the completion of the proposed project.
- (c) An applicant proposing to establish new ICF/MR beds shall comply with one of the following models:
 - (1) a residential community based freestanding facility with six beds or less, i.e., group home model; ~~or~~
 - (2) a community-based facility with 7 to 15 beds if documentation is provided that a facility of this size is necessary because adequate residential community based freestanding facilities are not available in the catchment area to meet the needs of the population to be ~~served~~ served; ~~or~~
 - (3) a facility with greater than 15 beds if the proposed new beds are to be established in response to an adjusted need determination contained in the 2003 State Medical Facilities Plan.
- (d) No more than three intermediate care facilities for the mentally retarded housing a combined total of 18 persons shall be developed on contiguous pieces of ~~property~~ property, with the exception that this standard may be waived for beds proposed to be established in response to an adjusted need determination contained in the 2003 State Medical Facilities Plan.

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Authority G.S. 131E-177(1), (5); 131E-183.

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

10A NCAC 14C .2701 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (3) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (4) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e), and includes dedicated fixed breast MRI scanners.
- (5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
- (6) "MRI procedure" means a single discrete MRI study of one patient.
- (7) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities ~~Plan which are the same for both mobile and fixed MRI scanners.~~ Plan, except for proposed new mobile MRI scanners.
- (8) "MRI study" means one or more scans relative to a single diagnosis or symptom.

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

10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire an MRI scanner, including a ~~Mobile~~ mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.
- (b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.
- (~~b~~) (c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall ~~also~~ provide the following ~~additional~~ information:

PROPOSED RULES

- (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~~ for each of the first three years of operation after completion of the project;
- (3) the average charge to the patient, regardless of who bills the patient, for each ~~proposed procedure of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;~~ if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation;
- ~~(3)(5)~~ 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.~~ Deleted: scanner; and
- (7) copies of agreements that have been established to accommodate referrals from other facilities in the MRI service area.

~~(d)~~ 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.

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

- (1) provide a copy of a contract or working agreement with a radiologist or practice group ~~that is competent, qualified,~~ and 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.

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

10A NCAC 14C .2703 PERFORMANCE STANDARDS

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

- (1) demonstrate that all existing MRI scanners, except those moved to provide services at more than one site, operating ~~in the MRI service area(s) in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year;~~
- (2) ~~project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed MRI scanner will be located;~~ ~~which the proposed MRI scanner will be located, shall be performing at least 2900 MRI~~
- (3) ~~demonstrate that all MRI scanners, except mobile, located in the MRI service area(s) in procedures per year in the applicant's third year of operation;~~
- (4) ~~demonstrate that all mobile MRI scanners located in the MRI service area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the proposed MRI service area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the MRI service area(s) in the applicant's third year of operation;~~
- (1) demonstrate that at least 2900 MRI procedures were performed in the last year on each of its existing mobile MRI scanners operating in the Health Service Area(s). (e.g., HSA I) in which the proposed mobile MRI scanner will be located [Note: This is not the average number of procedures performed on all of the applicant's mobile MRI scanners.];
- (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least 2900 MRI procedures on each of its existing, approved and proposed mobile MRI scanners to be operated in the Health Service

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PROPOSED RULES

- Area(s), (e.g., HSA D), in which the proposed equipment will be located [Note: This is not the average number of procedures performed on all of the applicant's mobile MRI scanners.]; **and**
- ~~(5)~~(3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the utilization of fixed MRI scanners, shall:
- (1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed an average of at least 2900 MRI procedures per scanner in the last year;
 - (2) project demonstrate annual utilization in the third year of operation of at least 2900 MRI procedures per year for the ~~proposed MRI scanner and is reasonably projected to be~~ an average of 2900 procedures per scanner for all ~~other~~ existing, approved and proposed MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
 - (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (c) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on utilization of mobile MRI scanners, shall:
- (1) ~~if the applicant does not own or lease an MRI scanner or have an approved MRI scanner, project demonstrate~~ annual utilization in the third year of operation ~~of is reasonably projected to be~~ at least 2080 MRI procedures per ~~year, year~~ for the proposed MRI ~~scanner and scanner~~;
 - (2) ~~if the applicant already owns or leases an MRI scanner or has an approved MRI scanner, project demonstrate annual utilization is reasonably projected to be~~ an average of 2900 MRI procedures per scanner for all ~~other existing, approved and proposed~~ MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
 - ~~(2)~~(3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- ~~(d) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the absence of an existing or approved fixed MRI scanner in the MRI service area shall:~~
- ~~(1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 2080 MRI procedures per year; and,~~
 - ~~(2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.~~

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

SECTION .3600 - CRITERIA AND STANDARDS FOR GAMMA KNIFE

10A NCAC 14C .3603 PERFORMANCE STANDARDS

An applicant proposing to acquire a gamma knife shall:

- (1) demonstrate that all existing gamma knives in the applicant's gamma knife service area performed at least 408 procedures during the 12 month period immediately preceding submittal of the application;
- (2) ~~project an annual utilization of at least 326 procedures per year by the end of the third year of operation demonstrate~~ that the gamma knife shall be utilized at an annual rate of at least 250 procedures (i.e., 80% of 312 procedures) per ~~machine, measured during the fourth quarter of the third year of operation following completion of the project,~~ and shall provide all assumptions and data supporting the methodology used for the projections;
- (3) for the projections provided in response to Item (2) of this Rule, calculate the number of procedures projected to be performed for clinical purposes and the number of procedures projected to be performed for research purposes; and
- (4) demonstrate that all of the existing and approved gamma knives in the applicant's gamma knife service area shall be performing at least 326 gamma knife procedures per year in the third year of operation of the new gamma knife, and provide all assumptions and data supporting the methodology used for the projections.

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

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

10A NCAC 14C .3701 DEFINITIONS

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

- (1) "Approved positron emission tomography (PET) scanner" means a PET scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Cyclotron" means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.

PROPOSED RULES

- (3) "Dedicated PET Scanner" means PET Scanners as defined in the applicable State Medical Facilities Plan.
- ~~(3)~~(4) "Existing PET scanner" means a PET scanner in operation prior to the beginning of the review period.
- ~~(4)~~(5) "Mobile PET Scanner" means a PET scanner and transporting equipment that is moved, at least weekly, to provide services at two or more host facilities.
- ~~(5)~~(6) "PET procedure" means a single discrete study of one patient involving one or more PET scans.
- (6)(7) "PET scan" means an image-scanning sequence derived from a single administration of a PET radiopharmaceutical, equated with a single injection of the tracer. One or more PET scans comprise a PET procedure.
- ~~(7)~~(8) "PET scanner service area" means the PET Scanner Service Area as defined in the applicable State Medical Facilities Plan.
- (8)(9) "Positron emission tomographic scanner" (PET) is defined in G.S. 131E-176(19a).
- ~~(9)~~(10) "Radioisotope" means a radiochemical which directly traces biological processes when introduced into the body.

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

10A NCAC 14C .3703 PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a dedicated PET scanner, including a mobile dedicated PET scanner, shall demonstrate that:
 - (1) the proposed dedicated PET scanner, including mobile dedicated PET ~~scanners~~, shall be utilized at an annual rate of at least 1,220 PET procedures by the end of the third year following completion of the project;
 - (2) its existing dedicated PET scanners, excluding those used exclusively for research, performed an average of 1,220 PET procedures, per PET scanner in the last year; and
 - (3) its existing and approved dedicated PET scanners shall perform an average of at least 1,220 PET procedures, per PET scanner during the third year following completion of the project.
- (b) The applicant shall describe the assumptions and provide data to support and document the assumptions and methodology used for each projection required in this Rule.

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

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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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 18A .1935, .1942, .1969*

Effective Date: *June 24, 2003*

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

Authority for the rulemaking: *G.S. 130A-335(c),(e),(f); 130A-343; 150B-20; 150B-21.1(a)(5); S.L. 2001-505, s. 2.5*

Reason for Proposed Action:

15A NCAC 18A .1935 and .1942 – The public interests were served by the process as described. This was a somewhat unique situation since the CHS received a petition from counsel representing Stephenson to amend the temporary rule which was originally adopted as a result of a recommended OAH decision (Gray) and affirmed by the agency (Devlin) making final decision with instruction to amend Rule .1942 in both a temporary and permanent action. The Commission for Health Services tabled action on the Petition to amend the temporary rules until the affected parties could come to a consensus. This was an arduous and tedious process but the outcome was a draft temporary rule that protected the public health while allowing development on sites previously found to be unsuitable due to soil wetness conditions.

15A NCAC 18A .1969 – The public interests were served by the process as described. The adoption and approval of Rule .1969 will provide uniform procedures and use of innovative wastewater systems which are much needed due to the increasing amount of unsuitable land for conventional wastewater systems. Session Law 2001-505 (HB-1019) amended G.S. 130A-343 governing the provisions for the approval of on-site subsurface wastewater systems, technologies, devices, and components. Section 2.5 of the referenced law authorizes the CHS to adopt temporary rules to implement Section 2.2.

Comment Procedures: *Written comments should be submitted to Steve J. Steinbeck, On-Site Wastewater Section, Division of Environmental Health, 1642 Mail Service Center, Raleigh, NC 27699-1642. Phone: (919) 715-3273, fax: (919) 715-3227, email: steve.steinbeck@ncmail.net.*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1935 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Alluvial Soils" means stratified soils without distinct horizons, deposited by flood waters.
- (2) "Alternative System" means any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.
- (3) "Approved" means that which has been considered acceptable to the State or local health department.
- (4) "Approved Privy" means a fly-tight structure consisting of a pit, floor slab, and seat riser constructed in accordance with Rule .1959 of this Section.
- (5) "Approved Public or Community Sewage System" means a single system of sewage collection, treatment, and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality, or a public utility, constructed and operated in compliance with applicable requirements of the Division of Environmental Management.
- (6) "Areas subject to frequent flooding" means those areas inundated at a 10-year or less frequency and includes alluvial soils and areas subject to tidal or storm overwash.
- (7) "Collection sewer" means gravity flow pipelines, force mains, effluent supply lines, and appliances appurtenant thereto, used for conducting wastes from building drains to a treatment system or to a ground absorption sewage treatment and disposal system.
- (8) "Designated wetland" means an area on the land surface established under the provisions of the Coastal Area Management Act or the Federal Clean Water Act.
- (9) "Design unit" means one or more dwelling units, places of business, or places of public assembly on:
 - (a) a single lot or tract of land;
 - (b) multiple lots or tracts of land served by a common ground absorption sewage treatment and disposal system; or
 - (c) a single lot or tract of land or multiple lots or tracts of land where the dwelling units, places of business or places of public assembly are under multiple ownership (e.g. condominiums) and are served by a ground absorption system or multiple ground absorption systems which are under common or joint ownership or control.

TEMPORARY RULES

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| <p>(10) "Dwelling unit" means any room or group of rooms located within a structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, bathing, toilet usage, cooking, and eating.</p> <p>(11) "Effluent" means the liquid discharge of a septic tank or other sewage treatment device.</p> <p>(12) "Estimated saturated hydraulic conductivity" - means a saturated hydraulic conductivity value based upon the soil profile evaluation and description of the soil texture, soil structure, soil consistency, soil pores, and roots following the procedures in Field Book for Describing and Sampling of Soils, NRCS, USDA and comparison to soil profile saturated hydraulic conductivity data for soil input files for similar soils. The Field Book is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 15 0B-21.6. Copies of the Field Book may be inspected at the Division of Environmental Health Raleigh Office, 2728 Capital Boulevard, Raleigh, N.C. 27604, and copies may be downloaded at no cost from the internet at http://soils.usda.gov/procedures/field_bk/main.htm#intro or obtained from the National Soil Survey Center, MS 34, Room 152.100 Centennial Mall North, Lincoln, NE 68508-3866.</p> <p>(13) "Ground absorption sewage treatment and disposal system" means a system that utilizes the soil for the subsurface disposal of partially treated or treated sewage effluent.</p> <p>(14) "Horizon" means a layer of soil, approximately parallel to the surface, that has distinct characteristics produced by soil forming processes.</p> <p>(15) "Horizon subdivision" - means a portion of a horizon, approximately parallel to the surface that has distinct characteristics produced by soil forming processes.</p> <p>(16) "Lateral water movement" - means the movement of water down slope on sites of at least a 4% slope and above a less permeable horizon, and as observed periodically in bore holes, excavations, or monitoring wells.</p> <p>(17) "Local health department" means any county, district, or other health department authorized to be organized under the General Statutes of North Carolina.</p> <p>(18) "Matrix" - means a volume equivalent to 50 percent or greater of the total volume of a horizon or horizon subdivision.</p> <p>(19) "Mean high water mark" means, for coastal waters having six inches or more lunar tidal influence, the average height of the high water over a 19 year period as may be ascertained from National Ocean Survey or U.S. Army Corps of Engineers tide stations data or as</p> | <p>otherwise determined under the provisions of the Coastal Area Management Act.</p> <p>(20) "Mottle" - means a feature(s) which occupies less than 50 percent of the total volume of a horizon or horizon subdivision.</p> <p>(21) "Naturally occurring soil" means soil formed in place due to natural weathering processes and being unaltered by filling, removal, or other man-induced changes other than tillage.</p> <p>(22) "Nitrification field" means the area in which the nitrification lines are located.</p> <p>(23) "Nitrification lines" means approved pipe, specially designed porous blocks, or other approved materials which receive partially treated sewage effluent for distribution and absorption into the soil beneath the ground surface.</p> <p>(24) "Nitrification trench", also referred to as a sewage absorption trench, means a ditch into which a single nitrification line is laid and covered by soil.</p> <p>(25) "Non-ground absorption sewage treatment system" means a facility for waste treatment designed not to discharge to the soil, land surface, or surface waters, including but not limited to, approved vault privies, incinerating toilets, mechanical toilets, composting toilets, chemical toilets, and recycling systems.</p> <p>(26) "Organic soils" means those organic mucks and peats consisting of more than 20 percent organic matter (by dry weight) and 18 inches or greater in thickness.</p> <p>(27) "Parent material" means the mineral matter that is in its present position through deposition by water, wind, gravity or by decomposition of rock and exposed at the land surface or overlain by soil or saprolite.</p> <p>(28) "Ped" means a unit of soil structure, such as an aggregate, crumb, prism, block, or granule formed by natural processes.</p> <p>(29) "Perched water table" means a saturated soil horizon or horizon subdivision, with a free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be as identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.</p> <p>(30) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or unit of local government.</p> <p>(31) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, foodhandling establishment, or any other place where people work or are served.</p> <p>(32) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.</p> |
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| <p>(33) "Privy building" means and includes any and all buildings which are used for privacy in the acts of urination and defecation which are constructed over pit privies and are not connected to a ground absorption sewage treatment and disposal system or a public or community sewage system.</p> | <p>includes bedrock and partially weathered rock that is relatively hard and cannot be dug with hand tools. The upper boundary of rock is "saprolite", "soil", or the land surface.</p> | <p>Deleted: (28)</p> |
| <p>(34) "Public management entity" means a city (G.S. 160A, Article 16), county (G.S. 153A, Article 15), interlocal contract (G.S. 153A, Article 16), joint management agency (G.S. 160A-461-462), county service district (G.S. 153A, Article 16), county water and sewer district (G.S. 162A, Article 6), sanitary district (G.S. 130A, Article 2), water and sewer authority (G.S. 162A, Article 1), metropolitan water district (G.S. 162A, Article 4), metropolitan sewerage district (G.S. 162A, Article 5), public utility [G.S. 62-3(23)], county or district health department (G.S. 130A, Article 2), or other public entity legally authorized to operate and maintain on-site sewage systems.</p> | <p>(41) "Sanitary system of sewage treatment and disposal" means a complete system of sewage collection, treatment and disposal, including approved privies, septic tank systems, connection to public or community sewage systems, incinerators, mechanical toilets, composting toilets, recycling toilets, mechanical aeration systems, or other such systems.</p> | <p>Deleted: (35)</p> <p>Deleted: (29)</p> |
| <p>(35) "Redoximorphic features" - means a color pattern of a horizon or horizon subdivision due to a loss (depletion) or gain (concentration) of pigment compared to the matrix color formed by oxidation/reduction of Fe and/or Mn coupled with their removal, translocation, or accrual; or a soil matrix color controlled by the presence of Fe+2 (see Field Book for Describing and Sampling of Soils, NRCS, USDA) which is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 150B-21.6.</p> | <p>(42) "Saprolite" means the body of porous material formed in place by weathering of igneous or metamorphic rocks. Saprolite has a massive, rock-controlled structure, and retains the fabric (arrangement of minerals) of its parent rock in at least 50 percent of its volume. Saprolite can be dug with hand tools. The lower limit of saprolite is "rock" and its upper limit is "soil" or the land surface. The term "saprolite" does not include sedimentary parent materials.</p> | <p>Deleted: (36)</p> <p>Deleted: (30)</p> <p>Deleted: (37)</p> |
| <p>(36) "Relocation" means the displacement of a residence, place of business, or place of public assembly from one location to another.</p> | <p>(43) "Saturated soils" - means a horizon or horizon subdivision with a free water surface at the corresponding depth and observed in a bore hole or monitoring well.</p> | <p>Deleted: (37)</p> <p>Deleted: (37)</p> |
| <p>(37) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with these Rules, which is reserved for the installation of additional nitrification fields and is not covered with structures or impervious materials.</p> | <p>(44) "Septic tank" means a water-tight, covered receptacle designed for primary treatment of sewage and constructed to:</p> <ol style="list-style-type: none"> (a) receive the discharge of sewage from a building; (b) separate settleable and floating solids from the liquid; (c) digest organic matter by anaerobic bacterial action; (d) store digested solids through a period of detention; and (e) allow clarified liquids to discharge for additional treatment and final disposal. | <p>Deleted: (30)</p> <p>Deleted: (31)</p> |
| <p>(38) "Residence" means any home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.</p> | <p>(45) "Septic tank system" means a subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.</p> | <p>Deleted: (38)</p> |
| <p>(39) "Restrictive horizon" means a soil horizon that is capable of perching ground water or sewage effluent and that is brittle and strongly compacted or strongly cemented with iron, aluminum, silica, organic matter, or other compounds. Restrictive horizons may occur as fragipans, iron pans or organic pans, and are recognized by their resistance in excavation or in using a soil auger.</p> | <p>(46) "Sewage" means the liquid and solid human waste and liquid waste generated by water-using fixtures and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.</p> | <p>Deleted: (32)</p> <p>Deleted: (39)</p> <p>Deleted: (33)</p> |
| <p>(40) "Rock" means the body of consolidated or partially consolidated material composed of minerals at or below the land surface. Rock</p> | <p>(47) "Site" means the area in which the sewage treatment and disposal system is to be located and the area required to accommodate repairs and replacement of nitrification field and permit proper functioning of the system.</p> | <p>Deleted: (40)</p> |
| <p></p> | <p>(48) "Soil" means the naturally occurring body of porous mineral and organic materials on the land surface. Soil is composed of sand-, silt-, and clay-sized particles that are mixed with varying amounts of larger fragments and some</p> | <p>Deleted: (41)</p> <p>Deleted: (34)</p> |

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organic material. Soil contains less than 50 percent of its volume as rock, saprolite, or coarse-earth fraction (mineral particles greater than 2.0 millimeters). The upper limit of the soil is the land surface, and its lower limit is "rock", "saprolite", or other parent materials.

(49) "Soil series" - means an official series name established by NRCS, USDA and confirmed to be present on the site by detailed on-site soil profile descriptions and taxonomic classification, and not necessarily the soil series mapped on the county soil survey.

(50) "Soil structure" means the arrangement of primary soil particles into compound particles, peds, or clusters that are separated by natural planes of weakness from adjoining aggregates.

(51) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (less than 0.05 mm - 0.002 mm or greater in size), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows and as shown in Soil Taxonomy, Appendix I, which is hereby adopted by reference in accordance with G.S. 150B-14(c):

(a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times the percentage of clay shall not exceed 15.

(b) "Loamy sand" means soil material that contains at the upper limit 85 to 90 percent sand, and the percentage of silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit it contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay does not exceed 30.

(c) "Sandy loam" means soil material that contains either 20 percent clay or less, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than seven percent clay, less than 50 percent silt, and between 43 and 52 percent sand.

(d) "Loam" means soil material that contains seven to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand.

(e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay.

(f) "Silt" means soil material that contains 8 percent or more silt and less than 12 percent clay.

(g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand.

(h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 45 percent sand.

(i) "Silty clay loam" means soil material that contains 27 to 40 percent clay and less than 20 percent sand.

(j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand.

(k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt.

(l) "Clay" means soil material that contains 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.

(52) "State" means the Department of Environment, Health, and Natural Resources, Division of Environmental Health.

(53) "Stream" means a natural or manmade channel, including groundwater lowering ditches and devices, in which water flows or stands most of the year.

(54) "Subsurface disposal" means the application of sewage effluent beneath the surface of the ground by distribution through approved nitrification lines.

History Note: Authority G.S. 130A-335(e) and (f); Eff. July 1, 1982; Amended Eff. July 1, 1995; January 1, 1990; August 1, 1988; April 1, 1985; Temporary Amendment Eff. June 24, 2003.

15A NCAC 18A .1942 SOIL WETNESS CONDITIONS

(a) Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by field evaluation for soil wetness colors and field observations, and may be assessed by well monitoring, computer modeling, or a combination of monitoring and modeling as required by this Rule. All sites shall be evaluated by an Authorized Agent of the Department using Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule.

(b) Basic Field Evaluation Procedures:

(1) A soil wetness condition shall be determined by field evaluation utilizing one of the following procedures:

(A) For evaluations completed prior to January 1, 2005, a soil wetness condition may be determined by the indication of colors of chroma 2 or less (Munsell Color Charts) at =2% of soil volume in mottles or matrix of

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 Deleted: (a)→Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by the first indication of colors of chroma two or less (equal to or greater than 1 percent of soil volume as determined by reference to Munsell Soil Color Charts) in mottles or a solid mass. However, colors of chroma two or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.¶
 (b) The Department may substitute a determination of soil wetness conditions by direct observation of the water surface in wells during periods of typically high water elevations utilizing monitoring procedures in Paragraph (c) of this Rule and one of the interpretation methods in Paragraph (d) of this Rule, when: ¶
 (1)→drainage modifications have been made on the lot or tract of land, including the installation of subsurface drain tile, open drainage ditches or surface landscape modifications.¶
 (2)→regional ground water lowering features are present, including drainage canals or ditches and streams, which are close enough to influence the soil wetness depth on the site.¶
 (3)→there are observed shallow soil wetness conditions but no observed low chroma colors; or¶
 (4)→when other factors are specifically identified which bring into question the determination of soil wetness based upon Paragraph (a) of this Rule.¶
 (c) The following procedure shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by direct observation.¶
 (1)→The property owner/applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a site monitoring plan no later than November 1 prior to the well monitoring period. An applicant other than the property owner shall have written authorization from the owner to be the owner's representative. ¶
 (A)→The monitoring plan shall include a site plan showing proposed wastewater system area(s) and specify any proposed site modifications.¶
 (B)→The monitoring plan shall indicate the proposed number, location, installation depth, screening depth, materials of construction and installation procedures for each monitoring well.¶
 (C)→The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield areas containing [1]

a horizon or horizon subdivision. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition; or

(B) soil wetness condition may be determined by the indication of redoximorphic features at =2% of soil volume of a horizon or horizon subdivision in accordance with methods in the Field Book for Describing and Sampling Soils, NRCS, USDA. This procedure shall take precedence over the Subitem (A) of this Paragraph. The Field Book is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 150B-21.6. Copies of the Field Book may be inspected at the Division of Environmental Health Raleigh Office, 2728 Capital Boulevard, Raleigh, 27604, and copies may be downloaded at no cost from the internet at http://soils.usda.gov/procedures/field_bk/main.htm#intro, or obtained from the National Soil Survey Center, MS 34, Room 152,100 Centennial Mall North, Lincoln, NE 68508-3866.

(2) A Soil wetness condition shall also be determined by the periodic direct observation or indication of saturated soils or a perched water table, or lateral water movement flowing into a bore hole, monitoring well, or open excavation above a less permeable horizon or horizon subdivision, that may occur without the presence of colors of chroma 2 or less or redoximorphic features. A soil wetness condition caused by saturated soils or a perched water table shall be confirmed to extend for at least three consecutive days. The shallowest depth to soil wetness condition determined by Subparagraph (b)(1) or (b)(2) of this Rule shall take precedence.

(c) Site Suitability as to Soil Wetness: Initial suitability of the site as to soil wetness shall be determined based upon the findings of the Basic Field Evaluation Procedures made pursuant to Paragraph (b) of this Rule. Sites where soil wetness conditions are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness. Sites where a soil wetness condition is determined based upon the observation or indication of lateral water movement within 48

inches of the naturally occurring soil surface shall be considered UNSUITABLE, except when such water can be intercepted in accordance with 15A NCAC 18A.1956(4).

(d) Alternative Procedures for Soil Wetness Determination: The Owner or the Owner's Legal Representative (Applicant) shall have the opportunity to submit documentation that the soil wetness condition and resultant site classification be alternately determined and reclassified by direct monitoring, computer modeling, or a combination of monitoring and modeling, in accordance with a Direct Monitoring Procedure, Monitoring and Modeling Procedure, or Modeling Procedure made pursuant to Paragraphs (e), (f), or (g) of this Rule. This determination shall take precedence over the determination made pursuant to the Basic Field Evaluation Procedures [Paragraph (b) of this Rule], when the conditions of Paragraphs (e), (f), or (g) of this Rule are met. Determination by one of these Monitoring or Modeling procedures shall also be required when:

- (1) the Owner proposes to use a wastewater system requiring a deeper depth to a soil wetness condition than the depth determined by the Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule; or
- (2) the Owner proposes to use sites with Group III or IV soil within 36 inches of the surface and where drainage modifications are proposed to be made, including the installation of subsurface drain tile, open drainage ditches, or surface landscape modifications, or on such sites when fill is proposed to be used in conjunction with existing or proposed drainage modifications. Final determination of soil wetness condition for these sites shall be made pursuant to the Modeling Procedure in Paragraph (g) of this Rule

(e) Direct Monitoring Procedure. Soil wetness conditions may be determined by direct observation of the water surface in wells during periods of typically high water elevations utilizing the following monitoring procedures and interpretation method.

- (1) The applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a proposal that includes a site plan, well and soil profile at each monitoring location, and a monitoring plan no later than 30 days prior to the monitoring period. An applicant other than the property owner shall have written authorization from the owner to be the owner's legal representative. Soil wetness and rainfall monitoring shall be conducted under the responsible charge of a third-party consultant(s), licensed or registered in accordance with G.S. 89C (Engineers), G.S. 89E (Geologists), G.S. 89F (Soil Scientists), or G.S. 90A Article 4 (Registered Sanitarians), or by the property owner/applicant. The Owner shall submit the name(s) of the consultant(s) performing any monitoring on their behalf to the local health department. A monitoring plan submitted for the 2002-2003 monitoring period prior to December 1, 2002, shall be reviewed pursuant to either the temporary Rule

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- .1942 amended effective April 17, 2002 or temporary Rule .1942 as amended by the Commission for Health Services on November 15, 2002, as requested by the applicant.
- (2) The applicant shall submit a site plan showing proposed sites for wastewater system, shall provide the longitude and latitude of the site, location of monitoring wells, and all drainage features that may influence the soil wetness conditions, and specify any proposed fill and drainage modifications.
- (3) The applicant shall submit a monitoring plan indicating the proposed number, installation depth, screening depth, soil and well profile, materials and installation procedures for each monitoring well, and proposed method of analysis. A minimum of three water level monitoring wells shall be installed for water surface observation at each site. Additional wells shall be required for sites handling systems with a design flow greater than 600 gallons per day (minimum of one additional well per 600 gallons per day increment).
- (4) The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield site(s) containing the most limiting soil/site conditions. Prior to installation of the wells the local health department shall approve the plan. If the plan is disapproved, the local health department shall include specific changes necessary for approval of the monitoring plan.
- (5) Wells shall extend at least five feet below the natural soil surface, or existing soil surface for fill installed prior to July 1, 1977 meeting the requirements for consideration of a site with existing fill of G.S. 130A-341 and the rules adopted pursuant thereto. However, a well or wells which extend(s) down only 40 inches may be used if they provide a continuous record of the water table for at least half of the monitoring period, and one or more shallower wells may be required on sites where shallow lateral water movement or perched soil wetness conditions are anticipated.
- (6) Water surface in the monitoring wells shall be recorded at least daily from January 1 to April 30, taken at the same time during the day (plus or minus three hours). A rain (precipitation) gauge is required within one-half mile of the site. At least daily rainfall shall be recorded beginning no later than December 1 through April 30 (the end of the well monitoring period).

(7) Interpretation Method for Direct Monitoring Procedure: The following method of determining depth to soil wetness condition from water surface observations in wells shall be used when the 60-day weighted rainfall index for the January through April monitoring period equals or exceeds the site's long-term (historic) 60-day weighted rainfall index for January to April rainfall with a 30 percent recurrence frequency (wetter than the 9th driest year of 30 on average). The 60-day weighted rainfall index for the monitoring period and historic rainfall record shall be computed as:

$$WRI_{60} = 0.5P_D + P_J + P_F + P_M + 0.5P_A$$

Where WRI_{60} = 60-day weighted rainfall index for January to April

P_D = Total December rainfall
 P_J = Total January rainfall
 P_F = Total February rainfall
 P_M = Total March rainfall
 P_A = Total April rainfall

The Department shall prepare contour maps for each county where this interpretation procedure is proposed. Contours shall be prepared following standard interpolation procedures using normalized data collected from all National Weather Service Stations, or equivalent, from which appropriate data are available, at least prior to February 1 of the monitoring season. Data from each station shall be normalized by fitting a 2-parameter gamma distribution to the 60-day weighted rainfall index computed for at least the most recent three decades of historic data, in accordance with procedures outlined in Chapter 18 of the National Engineering Handbook, NRCS, USDA. From this fitted distribution, the 60-day weighted rainfall index for January through April rainfall with a 30%, 50%, 70% and 80% recurrence frequency shall be computed for each Station, to provide the raw data points from which the contour maps shall be prepared. From these maps, the site's 60-day weighted rainfall index for the January through April monitoring period shall be compared to the long-term (historic) January to April 60-day weighted rainfall index at different expected recurrence frequencies. The soil wetness condition shall be determined as the highest level that is continuously saturated for the number of consecutive days during the January through April monitoring period shown in the following table:

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Recurrence Frequency Range January to April 60-Day Weighted Rainfall Index 30% to 49.9%	Number of Consecutive Days of Continuous Saturation for Soil Wetness Condition 3 days or 72 hours
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50% to 69.9%	6 days or 144 hours
70% to 79.9%	9 days or 216 hours
80% to 100%	14 days or 336 hours

(8) If monitoring well data is collected during monitoring periods that span multiple years, the year which yields the highest (shallowest) soil wetness condition shall be applicable.

(f) Monitoring and Modeling Procedure: A combination of monitoring and modeling may be used to determine a soil wetness condition utilizing the following monitoring procedures and interpretation method.

(1) The procedures described for the Direct Monitoring Procedure in Subparagraphs (e)(1), (2), (3), (4), (5), and (6) of this Rule shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by a combination of direct observation and modeling, except that the rainfall gauge and each monitoring well shall use a recording device and a data file (DRAINMOD-compatible) shall be submitted with the report to the local health department (devices shall record rainfall at least hourly and well water level at least daily).

(2) The ground water simulation model DRAINMOD shall be used to predict daily water levels over at least a 30 year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of at least 9 years in 30).

(A) Weather input files, required to run the DRAINMOD, shall be developed from hourly rainfall gauge data taken within a halfmile of the site and from daily temperature and hourly or daily rainfall data collected over a minimum 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for at least 30 days prior to this period, shall be obtained from the closest available weather station.

(B) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, estimated saturated

hydraulic conductivity of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the DRAINMOD Users Guide, and guidance is also available in Reports 333 and 342 of the University of North Carolinas Water Resources Research Institute. DRAINMOD soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.

(C) Inputs shall be based upon site specific soil profile descriptions. Soil and site input factors shall be adjusted during the model calibration process to achieve a best fit by least squares analysis of the daily observations over the whole monitoring period (mean absolute deviation between measured and predicted values no greater than eight inches), and to achieve the best possible match between the highest water table depth during the monitoring period (measured-vs-predicted) that is saturated for 14 consecutive days.

(D) For sites intended to receive over 1500 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.

(E) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department or Owner may request a technical review by the Department prior to approval of the soil wetness condition determination.

(g) Modeling Procedure: A soil wetness condition may be determined by application of DRAINMOD to predict daily water levels over at least a 30 year historic time period after all site-specific input parameters have been obtained, as outlined in the DRAINMOD Users Guide. This modeling procedure shall be used when a ground water lowering system is proposed for a site with Group III or IV soils within 36 inches of the naturally occurring soil surface. This procedure shall also be used to

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evaluate sites with Group III or IV soils within 36 inches of the naturally occurring soil surface, where the soil wetness condition was initially determined using a procedure described in Paragraphs (e) or (f) of this Rule and where drainage modifications are proposed or when fill is proposed to be used in conjunction with existing or proposed drainage modifications. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of at least 9 years in 30).

- (1) Weather input files, required to run DRAINMOD, shall consist of hourly rainfall and daily temperature data collected over the entire period of record but for at least a 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.
- (2) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, hydraulic conductivity of each horizon, depth and spacing of proposed drainage features and surface storage and drainage parameters, shall be selected in accordance with procedures outlined in the DRAINMOD User's Guide. DRAINMOD soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Inputs shall include:
 - (A) Soil input file with the soil moisture characteristic curve and data for the soil profile that is closest to the described soil profile that is present on the site;
 - (B) Soil horizon depths determined on site;
 - (C) Site measured or proposed drain depth and spacing, and drain outlet elevation;
 - (D) In-situ saturated hydraulic conductivity measurements for at least three representative locations on the site and at each location for at least three most representative soil horizons within five feet of the surface. Conductivity measurements shall be for one representative soil horizon at or above redoximorphic depletion features and two representative soil horizons at and below redoximorphic concentration features at each location on the site;
 - (E) All other model parameters based upon the DRAINMOD User's Guide, or other accepted values consistent with the simulation model; and

- (F) A sensitivity analysis shall be conducted for the following model parameters:
 - (i) Soil input files for at least two other most closely related soil profiles;
 - (ii) Saturated hydraulic conductivity of each of horizons measured on-site;
 - (iii) Drain depth and spacing; and
 - (iv) Surface storage and depth of surface flow inputs.

The sensitivity analysis shall be used to evaluate the range of soil and site characteristics for choosing input parameters related to the soil profiles, hydraulic conductivity input values based upon the range of hydraulic conductivity values measured on the site, and inputs for surface and subsurface drainage features based upon the range of possible elevations and distances that occur or may occur after installation of improvements. The sensitivity analysis shall establish which parameters are most critical for determination of the depth to soil wetness condition. Conservative values for the most critical parameters shall be used in applying the model to the site.

- (3) For sites designed to receive over 600 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.
- (4) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department shall submit the ground water simulation analysis to the Department for technical review prior to approval of the soil wetness condition determination.
- (h) A report of the investigations made for the Direct Monitoring Procedure, Monitoring and Modeling Procedure or Modeling Procedure pursuant to Paragraphs (e), (f), or (g) of this Rule shall be prepared prior to approval of the soil wetness condition determination. Reports prepared by a licensed or registered professional shall bear the professional seal of the person(s) whom conducted the investigation (Engineer, Geologist, Soil Scientist or Registered Sanitarian). A request for technical review of the report by the Department shall include digital copies of monitoring data and digital copies of model inputs, output data, and graphic results, as applicable.
- (j) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE if a modified, alternative or innovative system can

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be installed in accordance with 15A NCAC 18A .1956, .1957, or .1969.

History Note Authority G.S. 130A-335(e); Eff. July 1, 1982; Amended Eff. January 1, 1990; Temporary Amendment Eff. June 24, 2003; April 17, 2002.

15A NCAC 18A .1969 APPROVAL AND PERMITTING OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS, TECHNOLOGIES, COMPONENTS, OR DEVICES

Experimental, controlled demonstration, innovative, and accepted wastewater systems (hereinafter referred to as E & I systems) are any wastewater systems, system components, or devices that are not specifically described in Rules .1955, .1956, .1957, or .1958 of this Section, including any system for which reductions are proposed in the minimum horizontal or vertical separation requirements or increases are proposed to the maximum long-term acceptance rates of this Section; or any E & I systems as defined by G.S. 130A-343(a) and approved pursuant to applicable Laws and this Rule. This Rule shall provide for the approval and permitting of E & I systems.

- (1) An application shall be submitted in writing to the State for an E & I system. The application shall include the following, as applicable: (a) specification of the type of approval requested as either innovative, controlled demonstration, experimental, accepted or a combination; (b) description of the system, including materials used in construction, and its proposed use; (c) summary of pertinent literature, published research, and previous experience and performance with the system; (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems conducted by a third party research or testing organization; (e) identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system; (f) objectives, methodology, and duration of any proposed research or testing; (g) specification of the number of systems proposed to be installed, the criteria for site selection, and system monitoring and reporting procedures; (h) operation and maintenance procedures, system classification,

- (i) proposed management entity and system operator; procedure to address system malfunction and replacement or premature termination of any proposed research or testing; and notification of any proprietary or trade secret information, system, component, or device. (j) Fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.

- (2) The State shall review all applications submitted and evaluate at least the following: (a) the completeness of the application, and whether additional information is needed to continue the review; (b) whether the system meets the standards of an innovative system under Paragraph (3) of this Rule, or whether the system meets the standards of an experimental system under Paragraph (4) of this Rule, as applicable.

- (3) INNOVATIVE SYSTEMS: Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department shall permit innovative systems in accordance with the following:

- (a) The State shall approve the system as an innovative system if the following standards have been met: (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems. (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in

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- Rules .1955, .1956, .1957, or .1958 of this Section.
- (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation.
 - (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the Improvement Permit, Construction Authorization, or Operation Permit.
- (4) EXPERIMENTAL SYSTEMS: A system may be approved for use as an experimental system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.
- (a) To be approved by the State, the proposed research or testing program shall include the following:
 - (i) The research program shall be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Paragraph (3) of this Rule.
 - (ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.
 - (b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.
 - (c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental system when the following conditions are met:
 - (i) There is an application for an Improvement Permit in accordance with Rule .1937(c) of this Section, with the proposed use of an experimental system specified.
 - (ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met.
 - (iii) When an experimental system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair area using a non-experimental backup system in accordance with the provisions of Rule .1945(b) or an accepted system of Rule .1969 of this Section, except:
 - (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system; or
 - (B) When the experimental system is used as a repair to an existing malfunctioning system; or
 - (C) When the experimental system is to serve a vehicular, portable structure built on a chassis and designed to be used as a residence, place of business, or place of public assembly without a permanent foundation, in which case sufficient available space shall be reserved for the installation of a replacement system

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- at least equal to the initial experimental system.
- (iv) When an experimental system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.
- (v) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system malfunctions and is found to be non-repairable, or if the proposed research or testing program is prematurely terminated. Such statements shall be signed by the owner.
- (vi) The owner of the site on which an experimental system is proposed shall execute a easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.
- (vii) Provisions shall be made for operation and maintenance of the system.
- (viii) Any special conditions required for the installation of the experimental system shall be specified in the Improvement Permit and the Construction Authorization.
- (5) Use of an experimental system and any conditions shall be described on the Improvement ~~Permit.~~ Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.
- (ix) The proposed Improvement ~~Permit.~~ Construction Authorization and any subsequent operation permits for experimental systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.
- (d) Upon completion of the installation and prior to use, an Experimental System Operation Permit (ESOP) shall be issued by the local health department. The ESOP shall be valid for a specified period of time not to exceed five years. Special maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.
- (e) Prior to expiration of the ESOP and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP suspension or revocation.
- (f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including recommendations on future use of the system. If the State determines that the results indicate that the standards of Paragraph (3) of this Rule are met, the State shall approve the use as an innovative system.
- (5) Any proposed changes or modifications in the E & I system shall be submitted for review and approval by the State.

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| <p>(6) The State may modify, suspend or revoke the approval of an E & I system as provided for in G.S. 130A-343(c).</p> <p>(a) The E & I system approval shall be modified as necessary to comply with subsequent changes in laws or rules which affect their approval.</p> <p>(b) The approval of an E & I system may be modified, suspended or revoked upon a finding as follows:</p> <p style="padding-left: 20px;">(i) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;</p> <p style="padding-left: 20px;">(ii) the system or component fails to perform in compliance with performance standards established for the system;</p> <p style="padding-left: 20px;">(iii) the system or component or the E & I system applicant fails to comply with wastewater system Laws, Rules or conditions of the approval.</p> <p>(7) Modification, suspension or revocation of an E & I System approval shall not affect systems previously installed pursuant to the approval.</p> <p>(8) Reductions in total nitrification trench length allowed for E & I systems, as compared to the system sizing requirements delineated in Rule .1955 of this Section for conventional systems based upon excavated trench width, apply only to drainfields receiving septic tank effluent of domestic strength or better quality. The system may be used for facilities producing higher strength wastewater with nitrification trench length and trench bottom area determined based upon excavated trench width equal to what is required by Rule .1955 of this Section for a conventional gravel trench system, with no reduction or application of an equivalency factor. However, reductions up to 25 percent when allowed for approved innovative or accepted system models may be applied for facilities producing higher strength wastewater following a specifically approved pretreatment system designed to assure effluent strength equal to or better than domestic septic tank effluent, with a BOD less than 150 mg/l, TSS less than 100 mg/l and FOG less than 30 mg/l.</p> <p>(9) A Performance Warranty shall be provided by the manufacturer of any approved innovative or accepted wastewater system (warranty system) handling untreated septic tank effluent which allows for a reduction in the total nitrification trench length of more than 25% as compared to the total nitrification trench</p> | <p>length required for a 36-inch wide conventional wastewater system, pursuant to G.S. 130A-343(j). The Department shall approve the warranty when found in compliance with the applicable Laws and these Rules. When a warranty system is proposed to serve a residence, place of business, or place of public assembly, the site shall include a repair or replacement area in accordance with Rule .1945(b) of this Section or an innovative or accepted system approved under this Rule with no more than a 25% reduction in excavated trench bottom area.</p> <p>(a) The Manufacturer shall provide the approved Performance Warranty in effect on the date of the Operation Permit issuance to the owner or purchaser of the system. The warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.</p> <p>(b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall promptly return a copy of the signed Performance Warranty to the Manufacturer indicating the physical address or location of the facility served by the warranty system, date the system was installed or placed into use, and type and model of system installed.</p> <p>(c) The Performance Warranty shall provide that the manufacturer furnishes all materials and labor necessary to replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable Laws.</p> <p>(d) Performance Warranty repairs such as full replacement of the nitrification system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is</p> |
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issued by the local health department in accordance with this Section.

(e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty remains in effect, notwithstanding change in ownership, to the end of the five-year warranty period.

(10) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the

Department and applicable local health departments, and update this list whenever there are additions or deletions. No Operation Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.

History Note: Authority G. S. 130A-335(e),(f); 130A-343; Eff. April 1, 1993; Temporary Amendment Eff. June 24, 2003; February 1, 2003.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting June 19, 2003, 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 2004 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
01	NCAC	30I	.0101*	17:16 NCR
01	NCAC	30I	.0102	17:16 NCR
10A	NCAC	89C	.0205*	17:16 NCR
10A	NCAC	89C	.0603-.0604*	17:16 NCR
11	NCAC	11A	.0503-.0504*	17:18 NCR
11	NCAC	11A	.0506*	17:18 NCR
15A	NCAC	03M	.0506*	not required G.S. 150B -21.5(a)(5)
21	NCAC	54	.2104*	not required G.S. 150B -21.5(a)(5)
21	NCAC	58A	.0107*	not required G.S. 150B -21.5(a)(5)
21	NCAC	58E	.0203*	not required G.S. 150B -21.5(a)(5)

TITLE 1 - DEPARTMENT OF ADMINISTRATION

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, 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.

*History Note: Authority G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b).
Temporary Adoption Eff. August 1, 2002;
Eff. August 1, 2004.*

TITLE 10 - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 89C .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) services to members of the individual's family necessary to the adjustment or rehabilitation of the individual with disabilities;
- (7) rehabilitation technology including vehicular, home modifications, telecommunications, sensory, and other technological aids and devices;
- (8) post-employment services provided subsequent to the achievement of an employment outcome necessary to assist individuals with disabilities in maintaining employment (other than those services in Paragraph (d)(1) of this Rule which are provided without regard to financial need);
- (9) vocational and other training services, books, tools, and other training materials;
- (10) other goods and services expected to benefit an individual with disabilities in obtaining employment or achieving the individual's independent living goals;
- (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 shall 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 shall only be provided to the extent that financial support is not 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).

(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) foreign language interpreter/translator services for individuals who are unable to understand either verbal or written information presented by the Division;
- (3) any vocational rehabilitation service to individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act; and
- (4) all services and equipment provided by staff of the Division.

(e) The Division shall 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;

Amended Eff. August 1, 2004.

10A NCAC 89C .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:

- (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 an 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 the client's 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;

Amended Eff. August 1, 2004.

10A NCAC 89C .0604 PROCEDURES

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

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

(c) Eligible individuals who are already receiving services under an 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 shall continue until their records of service are closed.

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

(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.

(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 Six according to the availability of resources. Within each category an individual's rank in that category is determined by the individual's application date. The individual that applies first is served first.

(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.

(i) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories accepted for service shall be placed on a waiting list.

(j) When the order of selection is implemented, all individuals whose priority category classification 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 shall 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 shall 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; Amended Eff. August 1, 2004.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 11A .0503 FILING AND EXTENSIONS FOR FILING REPORTS

(a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. The Commissioner may require an insurer to file an audited financial report earlier than May 10 with 90 days advance notice to the insurer. In determining whether to require an insurer to file the report earlier than May 10, the Commissioner shall consider the standards set forth in G.S. 58-30-60(b)(1) through 58-30-60(b)(15). Two copies of this report shall be filed in the office of the Chief Examiner, Examination Section of the Department.

(b) An extension of the May 10 filing date shall be granted by the Commissioner for a period of up to 45 days upon a showing by the insurer and its CPA of the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. Examples of "good cause" include unavoidable delay arising from the designation of a new CPA by an insurer pursuant to the provisions of 11 NCAC 11A .0505 or a catastrophic event impacting the insurer. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the

Commissioner to make an informed decision with respect to the requested extension.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. April 1, 1993; Temporary Amendment Eff. February 15, 2003; Amended Eff. August 1, 2004.

11 NCAC 11A .0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

(a) The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for such year in conformity with G.S. 58-2-165(c).

(b) The annual Audited Financial Report shall include the following:

- (1) Report of CPA.
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (3) Statement of operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements.
 - (A) The notes to the financial statements required under this Subparagraph are those notes required by 11 NCAC 11A .0515; and
 - (B) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to G.S. 58-2-165 with a written description of the nature of these differences.
- (7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and:
 - (A) The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31; provided, however, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.
 - (B) Amounts may be rounded to the nearest dollar.
 - (C) Upon written application of any insurer, the Commissioner may permit the filing of consolidated statutory financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or a 100 percent reinsurance agreement that affects the solvency and integrity

of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool, provided columnar consolidating worksheets are included in the filing, showing each company separately, and including a listing and description of intercompany eliminations. In determining whether to accept the filing of consolidated statements, the Commissioner shall consider the standards set forth in G.S. 58-30-60(b)(1) through 58-30-60(b)(15).

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3)
Eff. December 1, 1990;
Temporary Amendment Eff. February 15, 2003;
Amended Eff. August 1, 2004.

11 NCAC 11A .0506 QUALIFICATIONS OF INDEPENDENT CPA

- (a) The Commissioner shall not recognize:
- (1) Any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice; or
 - (2) Any person or firm that has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.
- (b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code of ethics and rules of professional conduct for the state in which the CPA is licensed.
- (c) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or part by a natural person who:
- (1) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U. S. C. Sections 1961 to 1968k, or any dishonest conduct or practices under federal or state law subsequent to the CPA obtaining a license;
 - (2) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or
 - (3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Rule. For purposes of this item only "pattern or practice" includes one or more incidences of failure to detect an

insurer's noncompliance with Article 7 of Chapter 58.

(d) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3)
Eff. December 1, 1990;
Amended Eff. April 1, 1993;
Temporary Amendment Eff. February 15, 2003;
Amended Eff. August 1, 2004.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 03M .0506 SNAPPER-GROUPER

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.access.gpo.gov and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

- (b) Black sea bass, south of Cape Hatteras (36° 15.0321'):
- (1) It is unlawful to possess black sea bass less than ten inches total length.
 - (2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper-Grouper permit.
- (c) Gag grouper:
- (1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.
 - (2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper-Grouper Permit.

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- (3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.
- (4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (d) Black grouper:
 - (1) It is unlawful to possess black grouper less than 24 inches total length.
 - (2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.
 - (4) It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (e) It is unlawful to possess red grouper less than 20 inches total length.
- (f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.
- (g) It is unlawful to possess scamp less than 20 inches total length.
- (h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.
- (i) Speckled hind (kitty mitchell) and warsaw grouper:
 - (1) It is unlawful to sell or purchase speckled hind or warsaw grouper.
 - (2) It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.
- (j) Greater amberjack:
 - (1) For recreational purposes:
 - (A) It is unlawful to possess greater amberjack less than 28 inches fork length.
 - (B) It is unlawful to possess more than one greater amberjack per person per day.
 - (2) It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.
 - (3) It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (4) It is unlawful to possess more than one greater amberjack per person per day during the month of April.
 - (5) It is unlawful to sell or purchase greater amberjack during any season closure for greater amberjack.
- (k) Red Snapper:
 - (1) It is unlawful to possess red snapper less than 20 inches total length.
 - (2) It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper-Grouper permit.
- (l) Vermilion Snapper:
 - (1) For recreational purposes:
 - (A) It is unlawful to possess vermilion snapper (beeliner) less than 11 inches total length.
 - (B) It is unlawful to possess more than 10 vermilion snapper per person per day.
 - (2) It is unlawful to possess or sell vermilion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper-Grouper permit.
- (m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.
- (n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.
- (o) Red Porgy (*Pagrus pagrus*):
 - (1) It is unlawful to possess red porgy less than 14 inches total length.
 - (2) It is unlawful to possess more than one red porgy per person per day without a valid Federal Commercial Snapper-Grouper permit.
 - (3) It is unlawful to sell or offer for sale red porgy from January 1 through April 30.
 - (4) It is unlawful to land more than 50 pounds of red porgy from May 1 through December 31 in a commercial fishing operation.
- (p) Combined Bag Limits:
 - (1) It is unlawful to possess more than 10 vermilion snapper and 10 other snappers per person per day of which no more than two may be red snapper without a valid Federal Commercial Snapper-Grouper permit.
 - (2) It is unlawful to possess more than five grouper without a valid Federal Commercial Snapper-Grouper permit of which:
 - (A) no more than two may be gag or black grouper (individually or in combination) per person per day;
 - (B) no more than one may be speckled hind or one warsaw grouper per vessel per trip.
 - (3) It is unlawful to possess more than 20 fish in the aggregate per person per day of the following species without a valid Federal Commercial Snapper-Grouper permit: whitebone porgy, jolthead porgy, knobbed porgy, longspine porgy, sheepshead, gray triggerfish, queen triggerfish, yellow jack, crevalle jack, bar jack, almaco jack, lesser amberjack, banded rudderfish, white grunt, margates, spadefish, and hogfish.
- (q) It is unlawful to possess any species of the Snapper-Grouper complex except snowy, warsaw, yellowedge, and misty groupers; blueline, golden and sand tilefishes; while having longline gear aboard a vessel.
- (r) It is unlawful to possess Nassau grouper or jewfish.
- (s) Fish Traps/Pots:
 - (1) It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in Subparagraph (2) of this Paragraph.

(2) Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2, openings and degradable fasteners specified in 50 CFR Part 646.22(c)(2)(i), and escape vents and degradable materials as specified in 50 CFR Part 622.40 (b)(3)(i) and rules published in 50 CFR pertaining to sea bass north of Cape Hatteras (35° 15' N Latitude). Copies of these rules are available via the Federal Register posted on the Internet at www.access.gpo.gov and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

(t) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper-Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs (b),(j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(u) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper- Grouper complex.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991; Temporary Amendment Eff. December 23, 1996;

Amended Eff. August 1, 1998; April 1, 1997;

Temporary Amendment Eff. January 1, 2002; August 29, 2000; January 1, 2000; May 24, 1999;

Amended Eff. July 1, 2003; April 1, 2003; August 1, 2002.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY BOARD

21 NCAC 54 .2104 CONTINUING EDUCATION

(a) The purpose of continuing education is to provide for the continuing professional education of all psychologists licensed by the North Carolina Psychology Board consistent with the purpose of the Board which is to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

(b) Compliance with this Rule shall be a condition for license renewal. A license shall be suspended automatically by operation of law in accordance with G.S. 90-270.15(f) if a licensee fails to meet continuing education requirements specified in this Rule. This Rule shall apply to all individuals licensed by the North Carolina Psychology Board who choose to renew their licenses in North Carolina. Licensees who would otherwise be exempt from licensure, e.g., not practicing psychology in North Carolina, may relinquish their licenses if they do not wish to comply with the requirements specified in this Rule.

(c) A continuing education hour is defined as one hour of instructional or contact time.

(d) Category A requirements shall be met through attendance at formally organized courses, seminars, workshops, symposiums, and postdoctoral institutes; or through completion of on-line or correspondence courses. Programs shall relate to topics listed in Paragraph (g) of this Rule; be identified as offering continuing education for psychologists; and be sponsored or co-sponsored by the North Carolina Psychology Board, by the American Psychological Association, by American Psychological Association approved sponsors, or by North Carolina Area Health Education Centers. Contact hours shall be specified by the sponsor.

(e) Category B requirements shall be met through attendance at colloquia, presentations of invited speakers, grand rounds, and in-house seminars; attendance at programs offered at meetings of professional or scientific organizations which are not approved for Category A credit; participation in formally organized study groups or journal clubs; and self study (e.g., reading articles or books for professional growth or in preparation for publishing, teaching, or making a presentation). One continuing education hour shall be credited for each hour of participation in Category B activities.

(f) A licensee shall complete a minimum of 18 continuing education hours in each biennial renewal period which begins on the first day of October in each even numbered year. Continuing education hours shall not carry over from one renewal period to the next. At least nine continuing education hours shall be in Category A activities which shall include a minimum of three continuing education hours in the area of ethical and legal issues in the professional practice of psychology.

(g) Topics for Category A and Category B requirements shall fall within the following areas:

- (1) ethical and legal issues in the professional practice of psychology, and
- (2) the maintenance and upgrading of professional skills and competencies within the psychologist's scope of practice. This includes, but is not limited to, training in empirically supported treatments, the application of research to practice, and training in best practice standards and guidelines.

(h) Continuing education hours shall not be allowed for the following activities:

- (1) business meetings or presentations, professional committee meetings, and meetings or presentations concerned with the management of a professional practice;
- (2) membership, office in, or participation on boards and committees of professional organizations;
- (3) research;
- (4) teaching, presentations, and publication, except as allowed as self study in preparation for these activities as provided under Paragraph (e) of this Rule; and
- (5) personal psychotherapy or personal growth experience.

(i) An individual licensed on or before October 1, 2002, shall attest on the license renewal application for the 2004-2006 biennial renewal period, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two

years preceding the October 1st renewal date. An individual licensed after October 1, 2002, shall attest on the second license renewal application following licensure, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two years preceding the October 1st renewal date.

(j) An applicant for reinstatement of licensure shall document that he or she has completed a minimum of 18 continuing education hours as specified in this Rule within the two years preceding the date of application for reinstatement of licensure and shall attest on each subsequent biennial renewal application to having met the mandatory continuing education requirements specified in this Rule.

(k) For Category A, a licensee shall maintain certificates from Category A programs and written documentation of the following for a minimum of seven years:

- (1) date of program;
- (2) number of contact hours;
- (3) name of sponsor of program;
- (4) title of program; and
- (5) location of program.

(l) For Category B, a licensee shall maintain applicable written documentation of the following for Category B activities consistent with this Rule for a minimum of seven years:

- (1) date of program or activity;
- (2) number of instructional or contact hours as defined in Paragraphs (d) and (e) of this Rule;
- (3) description of activity;
- (4) name of presenter, facilitator, or leader;
- (5) name of sponsor;
- (6) location;
- (7) full citation of article; and
- (8) summary of content.

The nature of the Category B activity determines the applicable documentation. For example, name of presenter, facilitator, or leader; name of sponsor; and location are not required when a licensee documents reading a journal article.

(m) A licensee shall provide certificates, documentation, and a signed attestation form designed by the Board within 30 days after receiving written notification from the Board that proof of completion of continuing education hours is required. The Board may randomly verify the documentation of required continuing education hours for a percentage of licensees and may do so during the investigation of any complaints. A licensee shall not submit documentation of continuing education obtained unless directed to do so by the Board. The Board shall not serve as a depository for continuing education materials prior to its directing that documentation must be submitted.

History Note: Authority G.S. 90-270.9; 90-270.14(a)(2); Eff. August 1, 2002; Amended Eff. July 1, 2003.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money

deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements;
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall clearly identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks provided that such images are legible reproductions of the front and back of the original instruments with no more than four

- instruments per page and no smaller images than 2.25 x 5.0 inches, and provided that the licensee's bank retains the original checks on file for a period of at least five years and makes them available to the licensee and the Commission upon request;
- (3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket;
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall

- identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate;
- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;
- (7) copies of contracts, leases and management agreements;
- (8) closing statements and property management statements;
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and
- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account or accounts dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format previously described herein for vacation rental tenant security deposit monies and vacation rental advance payments.

History Note: Authority G.S. 93A-3(c);
Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2003; September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application, a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license, a current continuing education record, three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit; or
- (2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule

(d) The applicant must possess good teaching skills as demonstrated on a videotape portraying the instructor teaching a live audience. The applicant must submit for Commission review a videotape in VHS format. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The videotape must have been made within the previous one year. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

History Note: Authority G.S. 93A-3(c); 93A -4A;

Eff. July 1, 1994;

Amended Eff. July 1, 2003; September 1, 2002; July 1, 1996;

July 1, 1995.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, July 17, 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, July 11, 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

July 17, 2003
August 21, 2003 September 18, 2003
October 16, 2003

RULES REVIEW COMMISSION

June 19, 2003

MINUTES

The Rules Review Commission met on Thursday morning, June 19, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Graham Bell, Jim Funderburk, Walter Futch, Thomas Hilliard, Robert Saunders and John Tart.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

George Hurst	Attorney General's Office
Gretchen Aycock	Department of Administration
Michael Lopazanski	DENR/Coastal Management
Tancred Miller	DENR/Coastal Management
Sheila Green	DENR/Coastal Management
Ellie Sprenkel	Department of Insurance
Frank Folger	Department of Insurance
Dedra Alston	DENR
Pamela Millward	NC Real Estate Commission
Elizabeth Bishop	DHHS/Vocational Rehabilitation Services
Marjorie Donaldson	DHHS/Vocation Rehabilitation Services
Jeff Manning	DENR/DWQ
David McLeod	NC Department of Agriculture

APPROVAL OF MINUTES

Since the Commission had not established a quorum, the Chairman asked if any persons in the audience were present for the discussion of the Senate Bill 1151. Three persons introduced themselves but posed no questions or comments. A quorum was established and the meeting was called to order at 10:10 a.m. with Commissioner Funderburk presiding. Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the May 15, 2003, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

RULES REVIEW COMMISSION

1 NCAC 30H .0102-.0205; .0301; .0303; .0305; .0404; .0701; .0801; .1001: Department of Administration – Rules to be carried over to the August meeting to allow the State Building Commission to meet to consider and approve any proposed changes. Their next meeting will be in late July.

1 NCAC 35 .0101; .0103; .0201 -.0205; .0301; .0302; .0304-.0306; .0308; .0309: Department of Administration - Rules to be carried over to the August meeting.

11 NCAC 11A .0503; .0504; .0506: Department of Insurance – The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

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

2 NCAC 52B .0204: Department of Agriculture– The Commission objected to the rule due to ambiguity. In (a)(1), it is not clear what standards the State Veterinarian is to use in approving permanent means of cattle identification. In (a)(2), it is not clear who can certify a brucellosis-free State. In (b)(1)(B), it is not clear who can certify a herd as brucellosis-free. There is the same issue in (c) and (d). In (b)(2), it is not clear what the standards for approval of stockyards and farms are. There is the same issue in (d)(2)(E). This objection applies to existing language in the rule.

10 NCAC 1M .0102; .0103; .0104; .0105; .0106: DHHS - The Commission objected to the rules due to lack of statutory authority. While the history note for these rules as submitted does not cite any authority from the North Carolina General Assembly to adopt these rules, presumably the authority is G.S 143-10(j)(2). That statute requires the Governor's approval. There is no evidence the Governor has approved these amendments.

10 NCAC 1N .0102; .0103; .0104; .0105; .0106: DHHS - The Commission objected to the rules due to lack of statutory authority. G.S. 143B-10(j)(2) requires gubernatorial approval of these Rules. There is no indication he has done so.

10 NCAC 1O .0102; .0104: DHHS – The Commission voted to return the rules accordance with G.S. 150B-21.9. These rules were amended without going through the notice and hearing process set out in Part 2 of Article 2A of Chapter 150B of the North Carolina General Statutes. There is no authority cited for the agency to add the sentence to .0102(a) or to add the 60 day requirement to .0104 (a) without complying with the full APA process.

10 NCAC 1O .0103: DHHS - The Commission objected to the rule due to lack of statutory authority. G.S. 143B-10(j)(2) requires gubernatorial approval of these rules. There is no indication he has done so.

10 NCAC 20A .0102: DHHS/Division of Vocational Rehabilitation Services - The Commission objected to the rule due to ambiguity. In (4), it is not clear who is the "state agency." In (29), it is not clear if a "significant mental or physical impairment" has the same meaning as a "significant disability." If not, it is not clear what the term means.

10 NCAC 20C .0119: DHHS/Division of Vocational Rehabilitation Services - The Commission objected to the rule due to ambiguity. In (a), it is not clear when the Division must approve payment by an individual or what standards it will use in determining whether or not to approve. It is also not clear what agency is the "state agency." This objection applies to existing language in the rule.

10 NCAC 20C .0206: DHHS/Division of Vocational Rehabilitation Services - The Commission objected to the rule due to ambiguity. Paragraphs (c) and (d) appear to conflict with each other.

10 NCAC 20C .0606: DHHS/Division of Vocational Rehabilitation Services - The Commission objected to the rule due to ambiguity. In (b), it is not clear what would constitute an "appropriate" mode of communication.

15A NCAC 10B .0203; .0209; .0302; .0402: Wildlife Resources Commission – These rules were withdrawn and resubmitted for consideration at the July meeting.

15A NCAC 10C .0205; .0208; .0211; .0212; .0305; .0401; .0402; .0404; .0407; .0503: Wildlife Resources Commission – These rules were withdrawn and resubmitted for consideration at the July meeting.

15A NCAC 10D .0102 ; .0103; .0104: Wildlife Resources Commission – These rules were withdrawn and resubmitted for consideration at the July meeting.

15A NCAC 19G .0102: DHHS – This rule was withdrawn and resubmitted for consideration at the July meeting.

15A NCAC 20D .0243: Commission for Health Services – The rule was withdrawn and resubmitted for consideration at the July meeting.

15A NCAC 21A .0817; .0818; .0822: Commission for Health Services – These rules were withdrawn and resubmitted for consideration at the July meeting.

21 NCAC 58A .0107 and 21 NCAC 58E .0203: NC Real Estate Commission (Agenda items) – These rules were approved.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commission continued their earlier discussion on Senate Bill 1151 which concerns the Rules Review Commission handling temporary rules and the change of the permanent rule making process.

The meeting adjourned at 12:29 p.m.

The next meeting of the Commission is Thursday, July 17, 2003 at 10:00 a.m.

RULES REVIEW COMMISSION

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #199)
May 21, 2003 through June 20, 2003

NC MEDICAL CARE COMMISSION

Orders 10 NCAC 03L .1302 Amend

DHHS/SOCIAL SERVICES COMMISSION

Simplified Utility Allowances 10 NCAC 71U .0206 Amend

Income Exclusions 10 NCAC 71U .0210 Amend

Transitional Food Stamp Benefits 10 NCAC 71U .0212 Adopt

Semi-Annual Reporting 10 NCAC 71U .0213 Adopt

Name Deductions 10 NCAC 71U .0214 Adopt

Resource Exclusions 10 NCAC 71U .0215 Adopt

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Administration of Criminal Justice Schools 12 NCAC 09B .0201 Amend

Basic Training-Wildlife Enforcement Officers 12 NCAC 09B .0228 Amend

Certification of Instructors 12 NCAC 09B .0301 Amend

Terms and Conditions of Specialized Instructor Cert. 12 NCAC 09B .0305 Amend

Accreditation of Criminal Justice 12 NCAC 09C .0401 Amend

Required In-Service Training Topics 12 NCAC 09E .0102 Amend

Department Head Responsibilities 12 NCAC 09E .0103 Amend

Instructors In-Service Training 12 NCAC 09E .0104 Amend

Minimum Training Specifications In-Service Train 12 NCAC 09E .0105 Amend

In-Service Firearms Qualification Specifications 12 NCAC 09E .0106 Amend

Failure to Qualify In-Service Firearms Training 12 NCAC 09E .0107 Amend

Failure to Complete Annual In-Service Training 12 NCAC 09E .0108 Adopt

Definitions 12 NCAC 09G .0102 Amend

Citizenship 12 NCAC 09G .0202 Amend

Age 12 NCAC 09G .0203 Amend

Education 12 NCAC 09G .0204 Amend

Physical and Mental Standards 12 NCAC 09G .0205 Amend

Moral Character 12 NCAC 09G .0206 Amend

Certification of Correctional Officers Probation 12 NCAC 09G .0301 Amend

Notification of Charges/Convictions 12 NCAC 09G .0302 Amend

Probationary Certification 12 NCAC 09G .0303 Amend

General Certification 12 NCAC 09G .0304 Amend

Retention of Records of Certifications 12 NCAC 09G .0306 Amend

Specialized Instructor Certification 12 NCAC 09G .0310 Amend

Comprehensive Written Exam-Specialized Instructor 12 NCAC 09G .0315 Amend

Basic Training for Correctional Officers 12 NCAC 09G .0411 Amend

Corrections Specialized Instructor Training-Firearm 12 NCAC 09G .0412 Amend

Basic Training for Probation/Parole Officers-Survey 12 NCAC 09G .0413 Amend

Corrections Specialized Instructor Training 12 NCAC 09G .0415 Amend

Corrections Specialized Instructor-unarmed self 12 NCAC 09G .0416 Amend

Suspension Revocation or denial of certification 12 NCAC 09G .0504 Amend

General Provisions 12 NCAC 09G .0602 Amend

DENR/ENVIRONMENTAL MANGEMENT COMMISSON

Particulates from hot mix asphalt plants 15 NCAC 02D .0506 Amend

DENR/COASTAL RESOURCES COMMISSION

Exemption/Accessory Uses/Maintenance 15 NCAC 07K .0209 Amend

WHILDLIFE RESOURCES COMMISSION

Deer White Tailed 15 NCAC 10B .0203 Amend

Wild Turkey 15 NCAC 10B .0209 Amend

Open Seasons 15 NCAC 10B .0302 Amend

Tagging Furs 15 NCAC 10B .0402 Amend

Public Mountain Trout Waters 15 NCAC 10C .0205 Amend

Spawning Areas 15 NCAC 10C .0208 Amend

RULES REVIEW COMMISSION

Possession of Certain Fishes	15 NCAC 10C .0211	Amend
Fish Hatcheries	15 NCAC 10C .0212	Amend
Open Seasons Creel and Size Limits	15 NCAC 10C .0305	Amend
Manner of Taking Non-game Fishes Purchase and Sale	15 NCAC 10C .0401	Amend
Taking Non-game Fishes for Bait	15 NCAC 10C .0402	Amend
Special Device Fishing	15 NCAC 10C .0404	Amend
Permitted Special Devices and Open Seasons	15 NCAC 10C .0407	Amend
Descriptive Boundaries	15 NCAC 10C .0503	Amend
General Regulations Regarding Use	15 NCAC 10D .0102	Amend
Hunting on Game Lands	15 NCAC 10D .0103	Amend
Fishing on Game Lands	15 NCAC 10D .0104	Amend
DHHS		
Fees for Rabies Tags, Links, and Rivets	15 NCAC 19G .0102	Amend
COMMISSION FOR HEALTH SERVICES		
Chemistry Quality Assurance	15 NCAC 20D .0243	Amend
COMMISSION FOR HEALTH SERVICES		
Grant Applications	15 NCAC 21A .0817	Amend
Maximum Funding Level	15 NCAC 21A .0818	Amend
Criteria For Project Selection	15 NCAC 21A .0822	Amend
STATE BOARDS/LOCKSMITH LICENSING BOARD		
Scope	21 NCAC 29 .0101	Adopt
Meetings	21 NCAC 29 .0102	Adopt
Examination Fee	21 NCAC 29 .0201	Adopt
Application Requirements	21 NCAC 29 .0202	Adopt
Minimum Passing Scores	21 NCAC 29 .0203	Adopt
Requirements of Examinees	21 NCAC 29 .0204	Adopt
Failure to Attend Examination Session	21 NCAC 29 .0205	Adopt
Application Form	21 NCAC 29 .0401	Adopt
Establishment of Moral and Ethical Character	21 NCAC 29 .0402	Adopt
Completion of Examination	21 NCAC 29 .0403	Adopt
Fees	21 NCAC 29 .0404	Adopt
Exemption from Examination	21 NCAC 29 .0405	Adopt
Obligation of Licensed Locksmiths	21 NCAC 29 .0501	Adopt
Fair Business Practices	21 NCAC 29 .0502	Adopt
Protection of the Public Interest	21 NCAC 29 .0503	Adopt
Technical Integrity	21 NCAC 29 .0504	Adopt

AGENDA
RULES REVIEW COMMISSION
July 17, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
- A. Department of Agriculture – 2 NCAC 52B .0204 (Bryan)
 - B. DHHS - 10 NCAC 1M .0102-.0106 (Bryan)
 - C. DHHS – 10 NCAC 1N .0102-.0106 (Bryan)
 - D. DHHS – 10 NCAC 1O .0103 (Bryan)
 - E. DHHS/Division of Vocational Rehabilitation Services – 10 NCAC 20A .0102 (Bryan)
 - F. DHHS/Division of Vocational Rehabilitation Services – 10 NCAC 20C .0119; .0206; .0606 (Bryan)
 - 1 NCAC 30H .0102; .0201-.0205; .0301; .0303; .0305; .0404; .0701; .0801; .1001 To be considered at August Meeting (DeLuca)
 - Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 To be considered at August Meeting (DeLuca)
 - Cultural Resources Commission – 7 NCAC 4S .0104 (DeLuca)
 - Board of Elections – 8 NCAC Chapter 1-12 (DeLuca) To be considered at October Meeting
 - Board of Pharmacy – 21 NCAC 46 .1812 (DeLuca)

RULES REVIEW COMMISSION

- Board of Pharmacy – 21 NCAC 46 .2502 (DeLuca)

IV. Review of rules (Log Report #199)

V. Commission Business

VI. Next meeting: August 21, 2003

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Beryl E. Wade
A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. D HHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development	02 DHR 1672	Wade	06/10/03	
June Locklear				
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Constance Basnight v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
JUSTICE				
<i>Alarm Systems Licensing Board</i>				
Gregory L Swicegood, Jr. v. Alarm System Licensing Board	03 DOJ 0503	Morrison	05/16/03	
<i>Sheriffs' Education & Training Standards Commission</i>				
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03	
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03	
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03	
DEPARTMENT OF STATE TREASURER				
Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03	
DEPARTMENT OF PUBLIC INSTRUCTION				
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03	
ENVIRONMENT AND NATURAL RESOURCES				
Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03	
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269	Chess	05/14/03	
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03	
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119	Chess	05/14/03	

CONTESTED CASE DECISIONS

Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03	
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03	
HUMAN RELATIONS FAIR HOUSING				
Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03	
OFFICE OF STATE PERSONNEL				
Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03	
Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR 45
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03	
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03	
Norman Burton v. Chatham County	02 OSP 1483 ²	Gray	05/12/03	
Norman Burton v. Chatham County	02 OSP 1625 ²	Gray	05/12/03	
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03	
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03	
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03	
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03	
James E. Sharpe v. Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03	
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03	
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03	
David L. McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03	
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03	

- 1 Combined Cases
- 2 Combined Cases

(a) Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by the first indication of colors of chroma two or less (equal to or greater than 1 percent of soil volume as determined by reference to Munsell Soil Color Charts) in mottles or a solid mass. However, colors of chroma two or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.

(b) The Department may substitute a determination of soil wetness conditions by direct observation of the water surface in wells during periods of typically high water elevations utilizing monitoring procedures in Paragraph (c) of this Rule and one of the interpretation methods in Paragraph (d) of this Rule, when:

(1) drainage modifications have been made on the lot or tract of land, including the installation of subsurface drain tile, open drainage ditches or surface landscape modifications;

(2) regional ground water lowering features are present, including drainage canals or ditches and streams, which are close enough to influence the soil wetness depth on the site;

(3) there are observed shallow soil wetness conditions but no observed low chroma colors; or

(4) when other factors are specifically identified which bring into question the determination of soil wetness based upon Paragraph (a) of this Rule.

(c) The following procedure shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by direct observation.

(1) The property owner/applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a site monitoring plan no later than November 1 prior to the well monitoring period. An applicant other than the property owner shall have written authorization from the owner to be the owner's representative.

(A) The monitoring plan shall include a site plan showing proposed wastewater system area(s) and specify any proposed site modifications.

(B) The monitoring plan shall indicate the proposed number, location, installation depth, screening depth, materials of construction and installation procedures for each monitoring well.

(C) The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield areas containing the most limiting soil/site conditions. Prior to installation of the wells the LHD shall approve the plan. Well observations shall not be made prior to plan approval.

(2) Water surface observations and rainfall shall be recorded at least daily from January 1 to April 30, taken at the same time during the day (plus or minus two hours).

(3) A minimum of three water level monitoring wells shall be installed for water surface observation at each site.

(4) Wells shall extend four feet below the natural soil surface, except one or more shallower wells may be required on sites where shallow lateral water movement or perched soil wetness conditions are anticipated.

(5) A rain (precipitation) gauge is required at every non-contiguous site. At least daily rainfall shall be recorded beginning no later than December 1 prior to the well monitoring period.

(6) Soil wetness and rainfall monitoring shall be conducted under the responsible charge of a third-party consultant(s), licensed or registered in accordance with G.S. 89C (Engineers), G.S. 89E (Geologists), G.S. 89F (Soil Scientists), or G.S. 90A, Article 4 (Registered Sanitarians), or by the property owner/applicant. The owner/applicant shall submit the name(s) of the consultant(s) performing any monitoring on their behalf to the local health department.

(d) One of the following interpretation procedures shall be used for the determination of soil wetness condition from the direct observation of the water surface in wells.

(1) An approved ground water simulation model, such as DRAINMOD, or equivalent, shall be used to predict daily water levels over at least a 30-year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The soil wetness condition shall be determined as the level which is saturated for at least one 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of 9 years in 30).

(A) Weather input files, required to run the approved groundwater simulation model, shall be developed from the on-site rainfall observations and from rainfall and temperature data collected over at least a 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for at least 30 days prior to this period, shall be obtained from the closest available weather station.

(B) Soil and site inputs for the approved groundwater simulation model, including a soils data file specific to the soil series identified, depths of soil horizons, hydraulic conductivity of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the user guide for the approved simulation model (e.g. DRAINMOD User's Guide, in Report No. 333 of the University of North Carolina's Water Resources Research Institute and in the Water Resources Research Institute Project No. 70175 final report). Inputs shall be based upon site-specific soil profile descriptions and at least one of the following:

- (i) site-specific drain depth and spacing, when parallel drains are present, or
- (ii) site-specific hydraulic conductivity measurements for each identified soil layer.

Soil and site input factors not determined by on-site measurement shall be adjusted during the model calibration process to achieve a best fit by least squares analysis of the daily observations (measured-vs.-predicted), and to achieve the best possible match between the duration of periods (measured- vs.-predicted) when the water tables are within 24 inches of the natural soil surface;

(C) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals who are qualified to use the ground water simulation model by training and experience.

(2) The following method of determining depth to soil wetness condition from water surface observations in wells may be used whenever the total measured rainfall for the January 1 through April 30 monitoring period equals or exceeds the long-term (historic) January to April rainfall with a 30 percent or more recurrence frequency at the closest National Weather Service station, or equivalent, that has at least a 30-year historic rainfall record.

(A) The soil wetness condition shall be determined as the highest level that is continuously saturated for at least two consecutive days during the January through April monitoring period.

(B) If data is collected during monitoring periods which span multiple years, the highest (shallowest) level determined shall be applicable 15A NCAC 18A Rule .1956(2).

(C) The owner/applicant may subsequently choose to apply the ground water simulation method described in Subparagraph (d)(1) of this Rule to support a depth to soil wetness deeper than determined by application of this method.

(e) Notwithstanding which method is used to determine soil wetness condition from the observations of the water surface elevation in wells pursuant to Paragraph (d) of this Rule, the following conditions shall apply.

(1) Whenever the observed water surface is within 12-inches of the naturally occurring soil surface for 14 or more consecutive days during the monitoring period, the site shall be considered UNSUITABLE.

(2) Existing fill sites meeting the requirements of 15A NCAC 18A .1957(b)(2) shall be considered UNSUITABLE when the observed water surface is within 18 inches of the ground surface of the existing fill for 14 or more consecutive days.

(3) When direct observation in wells is utilized to determine soil wetness conditions on drainage modified sites, the requirements of Rule .1956(2) are also applicable.

(f) Sites where soil wetness conditions, determined pursuant to Paragraph (a) of this Rule or Paragraphs (b) through

(d) of this Rule, are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness.

(g) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE after an investigation indicates that a modified or alternative system can be installed in accordance with Rules .1956, .1957, or .1969 of this Section.