

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 classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
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Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2003 – December 2003

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
17:13	01/02/03	12/06/02	01/17/03	03/03/03	03/20/03	05/01/03	05/10/04	09/29/03
17:14	01/15/03	12/19/02	01/30/03	03/17/03	03/20/03	05/01/03	05/10/04	10/12/03
17:15	02/03/03	01/10/03	02/18/03	04/04/03	04/21/03	06/01/03	05/10/04	10/31/03
17:16	02/17/03	01/27/03	03/04/03	04/21/03	04/21/03	06/01/03	05/10/04	11/14/03
17:17	03/03/03	02/10/03	03/18/03	05/02/03	05/20/03	07/01/03	05/10/04	11/28/03
17:18	03/17/03	02/24/03	04/01/03	05/16/03	05/20/03	07/01/03	05/10/04	12/12/03
17:19	04/01/03	03/11/03	04/16/03	06/02/03	06/20/03	08/01/03	05/10/04	12/27/03
17:20	04/15/03	03/25/03	04/30/03	06/16/03	06/20/03	08/01/03	05/10/04	01/10/04
17:21	05/01/03	04/09/03	05/16/03	06/30/03	07/21/03	09/01/03	05/10/04	01/26/04
17:22	05/15/03	04/24/03	05/30/03	07/14/03	07/21/03	09/01/03	05/10/04	02/09/04
17:23	06/02/03	05/09/03	06/17/03	08/01/03	08/20/03	10/01/03	05/10/04	02/27/04
17:24	06/16/03	05/23/03	07/01/03	08/15/03	08/20/03	10/01/03	05/10/04	03/12/04
18:01	07/01/03	06/10/03	07/16/03	09/02/03	09/22/03	11/01/03	05/10/04	03/27/04
18:02	07/15/03	06/23/03	07/30/03	09/15/03	09/22/03	11/01/03	05/10/04	04/10/04
18:03	08/01/03	07/11/03	08/16/03	09/30/03	10/20/03	12/01/03	05/10/04	04/27/04
18:04	08/15/03	07/25/03	08/30/03	10/14/03	10/20/03	12/01/03	05/10/04	05/11/04
18:05	09/02/03	08/11/03	09/17/03	11/03/03	11/20/03	01/01/04	05/10/04	05/29/04
18:06	09/15/03	08/22/03	09/30/03	11/14/03	11/20/03	01/01/04	05/10/04	06/11/04
18:07	10/01/03	09/10/03	10/16/03	12/01/03	12/22/03	02/01/04	05/10/04	06/27/04
18:08	10/15/03	09/24/03	10/30/03	12/15/03	12/22/03	02/01/04	05/10/04	07/11/04
18:09	11/03/03	10/13/03	11/18/03	01/02/04	01/20/04	03/01/04	05/10/04	07/30/04
18:10	11/17/03	10/24/03	12/02/03	01/16/04	01/20/04	03/01/04	05/10/04	08/13/04
18:11	12/01/03	11/05/03	12/16/03	01/30/04	02/20/04	04/01/04	05/10/04	08/27/04
18:12	12/15/03	11/20/03	12/30/03	02/13/04	02/20/04	04/01/04	05/10/04	09/10/04

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD

(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

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

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:

The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:

This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

Note from the Codifier: 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**

Eastbourne Investments Ltd.

Pursuant to G.S. 130A-310.34, Eastbourne Investments Ltd. 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 is the Archdale Marketplace Shopping Center complex, a 13.9142-acre parcel at 5801 to 6025 South Boulevard, at its intersection with Archdale Drive in Charlotte, Mecklenburg County, North Carolina. Environmental contamination exists on the Property in groundwater. Prospective Developer has committed itself to redevelopment of the Property for no uses other than commercial and retail. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Eastbourne Investments Ltd, 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 600 East Trade Street, Neighborhood Development Key Business, Charlotte, NC, 28217 by contacting Carolyn Minnich at that address, at carolyn.minnich@ncmail.net 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
Brownfields Program
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

M & J Equities, LLC

Pursuant to G.S. 130A-310.34, M&J Equities, LLC 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 2.5 acres and is located at 925 Summit Avenue. Environmental contamination exists on the Property in groundwater and soil. M&J Equities, LLC has committed itself to make no other use of the Property than as an improved parking area for use by the nightclub on the Property and for uptown Charlotte events. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and M&J Equities, LLC 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, 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

**The 2004 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

INTRODUCTION

The Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of federal low-income housing tax credits:
 - 1. Project location and site suitability
 - 2. Market demand and local housing needs
 - 3. Serving the lowest income tenants
 - 4. Serving qualified tenants for the longest periods
 - 5. Design and quality of construction
 - 6. Financial structure and long-term viability
 - 7. Use of federal project-based rental assistance
 - 8. Use of mortgage subsidies
 - 9. Experience of development team and management agent(s)
 - 10. Serving persons with disabilities and the homeless
 - 11. Willingness to solicit referrals from public housing waiting lists
 - 12. Tenant populations of individuals with children
 - 13. Projects intended for eventual tenant ownership
 - 14. Projects that are part of a Community Revitalization Plan
- B. Threshold, underwriting and process requirements for project applications and tax credit awards.
- C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

An allocation of tax credits does not constitute a representation or warranty that the ownership entity or its owners will qualify for or be able to use the tax credits. The Agency's interpretation of the Code is not binding on the Internal Revenue Service, and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the Internal Revenue Service will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

In the process of administering the low-income housing tax credit and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations.

II. SET-ASIDES AND COUNTY DESIGNATIONS

No county or project will be awarded tax credits for new construction exceeding \$1,500,000 unless doing so is necessary to meet another set-aside requirement of this Plan. No county will be awarded more than two projects under the rehabilitation set-aside. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies (such as HOPE VI) or implementation of a disaster relief plan.

Any Principal will be limited to an award of a) not more than fifteen percent (15%) of the total tax credits available and b) two projects under the rehabilitation set-aside. (Rehabilitation awards will count against the fifteen percent (15%) total.) All persons and entities meeting the definition of Principal will be certified by the applicant on the application, at carryover allocation and at final cost certification. Any project that qualifies for an allocation of credits but that would result in a Principal exceeding this limit will be disqualified and ineligible for a credit allocation in the current year.

IN ADDITION

The Agency may allocate 2004 tax credits outside of the normal process to projects that: 1) address the loss of housing due to the effects of a natural disaster, 2) allow the Agency to comply with HUD regulations regarding timely commitment of funds, 3) prevent the loss of federal investment, 4) provide housing for underserved populations and/or 5) are part of a settlement agreement of legal action brought against a local government. The total amount of such allocation(s) shall not exceed \$1,000,000. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund projects with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan in the year credits are to be allocated. In the event that credits are returned, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

The limitations on awards listed above and those contained in Sections II(A), II(B) and II(C) may be exceeded in order to completely fund a project request.

A. GEOGRAPHIC SET-ASIDES

The Agency has established geographic set asides for the ranking and selection of new construction projects. The Agency reserves the right to revise the available credits in each set-aside. Tax credits and RPP funds available for new construction projects will be distributed as follows:

WEST: 15%	CENTRAL: 30%	METRO: 30%	EAST: 25%
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WEST		CENTRAL		METRO	EAST	
Alexander	Jackson	Alamance	Lincoln	Durham	Beaufort	Johnston
Alleghany	Macon	Anson	Montgomery	Forsyth	Bertie	Jones
Ashe	Madison	Cabarrus	Moore	Guilford	Bladen	Lenoir
Avery	McDowell	Caswell	Orange	Mecklenburg	Brunswick	Martin
Buncombe	Mitchell	Chatham	Person	Wake	Camden	Nash
Burke	Polk	Cumberland	Randolph		Carteret	New Hanover
Caldwell	Rutherford	Davidson	Richmond		Chowan	Northampton
Catawba	Surry	Davie	Rockingham		Columbus	Onslow
Cherokee	Swain	Franklin	Rowan		Craven	Pamlico
Clay	Transylvania	Gaston	Scotland		Currituck	Pasquotank
Cleveland	Watauga	Granville	Stanly		Dare	Pender
Graham	Wilkes	Harnett	Stokes		Duplin	Perquimans
Haywood	Yadkin	Hoke	Union		Edgecombe	Pitt
Henderson	Yancey	Iredell	Vance		Gates	Robeson
		Lee	Warren		Greene	Sampson
					Halifax	Tyrrell
					Hertford	Washington
					Hyde	Wayne
						Wilson

New construction applications will be awarded credits starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending score order through the last project that can be fully funded. The remaining credits from all four geographic set-asides are then added together and allocated to the next highest scoring application(s) statewide, unless (in the Agency's discretion) such amount should be carried forward and applied to the next year's federal tax credit ceiling.

B. REHABILITATION SET-ASIDE

The Agency will award up to the lesser of the following amounts to projects proposing rehabilitation of existing housing: 1) twenty percent (20%) of the state's total federal tax credit ceiling, or 2) the amount required for ten projects. Rehabilitation projects will not be eligible for credits other than in this set-aside. These awards will be based on the criteria listed in Section IV(H) and are not subject to the geographic set-asides. Adaptive re-use projects and entirely vacant residential buildings will be considered new construction.

C. NONPROFIT AND CHDO SET-ASIDES

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

1. ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (non-profits) and
2. fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s).

In order to qualify for the first category, an application must either not involve any for-profit Principals or comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2). In order to qualify for the second category, an application must meet the requirements of Section II(C)(1) above, 24 CFR 92.300(a)(1) and any other regulation regarding the federal CHDO set-aside. The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing this subsection.

D. COUNTY INCOME DESIGNATIONS

Pursuant to G.S. 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination:

- o County median income
- o Poverty rate
- o Percent of population in rural areas
- o Regional growth patterns
- o Enterprise area tier (one through five)

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Lee	Alleghany	Graham	Pamlico
Cabarrus	Brunswick	Lincoln	Anson	Greene	Pasquotank
Chatham	Buncombe	Moore	Ashe	Halifax	Pender
Davidson	Burke	Nash	Avery	Haywood	Perquimans
Durham	Caldwell	New Hanover	Beaufort	Hertford	Richmond
Forsyth	Carteret	Onslow	Bertie	Hoke	Robeson
Guilford	Catawba	Person	Bladen	Hyde	Rockingham
Iredell	Cleveland	Pitt	Camden	Jackson	Rutherford
Johnston	Craven	Polk	Caswell	Jones	Sampson
Mecklenburg	Cumberland	Randolph	Cherokee	Lenoir	Scotland
Orange	Dare	Stanly	Chowan	Macon	Surry
Rowan	Davie	Stokes	Clay	Madison	Swain
Union	Franklin	Transylvania	Columbus	Martin	Tyrrell
Wake	Gaston	Watauga	Currituck	McDowell	Vance
	Granville	Wayne	Duplin	Mitchell	Warren
	Harnett	Wilson	Edgecombe	Montgomery	Washington
	Henderson	Yadkin	Gates	Northampton	Wilkes
					Yancey

III. DEADLINES AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2004 application process for 9% tax credits. Applicants seeking a tax exempt bond allocation and 4% tax credits should refer to the application schedule in **Appendix G**.

IN ADDITION

January 9	Deadline for electronic submission of preliminary applications (5:00PM, no exceptions)
January 16	Deadline for paper version of preliminary applications and exhibits (12:00 noon, no exceptions)
February 27	Market analysts will mail studies to the Agency and applicants
March 19	Deadline for market-related project revisions
March 26	Market analysts will mail comments on revisions to the Agency and applicants
April 16	Notification of site and market scores and preliminary evaluation of rehabilitation projects
May 7	Deadline for new construction full applications (12:00 noon, no exceptions)
May 14	Deadline for rehabilitation full applications (12:00 noon, no exceptions)
August 6	Notification of final reservations
November 19	Deadline for carryover allocation agreement

The Agency reserves the right to change the schedule as necessary.

B. APPLICATION AND ALLOCATION FEES

1. All applicants are required to pay a nonrefundable fee of \$5,040 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,040 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All applicants are required to pay a nonrefundable processing fee of \$1,040 upon submission of the full application.
3. Entities receiving 9% credit awards are required to pay a nonrefundable allocation fee equal to the greater of:
 - (a) 0.52% of the project's total eligible basis or,
 - (b) seventy-five hundred dollars (\$7,500).

The allocation fee must be paid to the Agency upon the earlier of return of the reservation letter or carryover allocation agreement. Failure to return the required documentation and fee by the date specified may result in cancellation of the tax credit reservation. The fee for entities receiving tax-exempt bond volume is specified in **Appendix G**.

4. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
5. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed.

NOTE: The nonrefundable processing fee will be increased by two percent (2%) each year after 2002.

C. MONITORING FEES

The following must be paid prior to the issuance of a federal form 8609:

Project Type	Federal Credits Only	Federal and State Tax Credits
Tax credit projects without an Agency loan, including projects using tax-exempt bond financing and 4% credits	\$425 per unit	\$525 per unit
Projects using RD financing without RPP funding	\$250 per unit	\$350 per unit
Projects receiving an RPP loan, regardless of RD financing.	\$500 per unit	\$600 per unit
Projects including market-rate units, regardless of other financing.	\$500 per unit	\$600 per unit

The monitoring fee is applied to **all units in a project**, including all market rate units and units reserved for managers or other personnel.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Each new construction project will be ranked using the points described in Sections IV(A), IV(B), IV(C), IV(D), IV(E), IV(F) and IV(G) below. The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

Applications must meet all threshold requirements and receive 160 points to be considered for award and funding. This limitation also applies to tax-exempt bond financing; even with an allocation of bond authority, projects must meet the minimum score and threshold requirements to be eligible for tax credits. Rehabilitation projects will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2004 cycle.

A. SITE AND MARKET EVALUATION (MAXIMUM 155 POINTS)

1. SITE EVALUATION (MAXIMUM 140 POINTS)

- (a) Site scores will be based on the following factors. Each will also serve as a threshold requirement: the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. Evaluation of sites will involve a relative comparison with other applications in the same geographic set-aside, with an emphasis on those the Agency considers to be within the same market area. Criteria involving consideration of land uses will focus on the area within approximately one-half mile. The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. Where appropriate, the score for a particular category will reflect the project's tenant type (family/elderly/special needs).

NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 40 POINTS)

- Trend and direction of real estate development and area economic health
- Physical condition of buildings and improvements
- Concentration of affordable housing

SURROUNDING LAND USES AND AMENITIES (MAXIMUM 65 POINTS)

- Suitability of surrounding development
- Land use pattern is primarily residential (single and multifamily housing) with a balance of other uses (particularly retail and amenities)
- Availability, quality and proximity of services, amenities and features: grocery store; mall/strip center; gas/convenience; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center, basketball/tennis courts, fitness/nature trails, public swimming pool, restaurants, bank/credit union, medical offices, professional services, movie theater, video rental, public safety (fire/police)
- Effect of industrial, large-scale institutional or other incompatible uses, including but not limited to: wastewater treatment facilities, high traffic corridors, junkyards, prisons, landfills, large swamps, distribution facilities, frequently used railroad tracks, power transmission lines and towers, factories or similar operations, sources of excessive noise, and sites with environmental concerns (such as odors or pollution)
- Amount and character of vacant, undeveloped land

SITE SUITABILITY (MAXIMUM 35 POINTS)

- Adequate traffic controls (stop light, turn lanes, etc.)
- Burden on public facilities (particularly roads)
- Access to mass transit (if applicable)
- Degree of on-site negative features and physical barriers that will impede project construction or adversely affect future tenants; for example: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects-suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)
- Similarity of scale and aesthetics/architecture between project and surroundings

- (b) General Site Requirements

- Sites must be sized to accommodate the number and type of units proposed. Required zoning must be in place by the full application submission date, including any special use permits, traffic studies, conditional use permits and other land use requirements.
- The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by a valid option, contract or warranty deed.
- Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the applicant's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage, as well as document the applicant's right to perform such work through, for example, language in the real estate option/contract, separate contract or consent by the city or town.

2. MARKET ANALYSIS (MAXIMUM 15 POINTS)

- (a) The Agency will contract directly with market analysts to perform studies for new construction projects. Applicants may interact with market analysts in order to make appropriate project design and targeting adjustments. Applicants will have an opportunity to revise their project (unit mix, targeting) based on the market analyst's recommendations; such revisions may increase the market score. Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A).
- (b) A project will not receive tax credits or RPP funding if it is in the same market area as previously funded tax credit or RPP projects (including earlier phases of the same overall development) which have not reached stabilized occupancy or a recent history of high vacancy rates. The Agency will only waive these limitations if it determines there is a strong demand for all units involved. The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) A maximum of fifteen (15) points may be awarded to applications for new construction projects using the following criteria, each of which will also serve as a threshold requirement.
 - The project's required market share, or the percent of income qualified households seeking housing that the project would need to capture to achieve stabilized occupancy.
 - The number of months between project completion and stabilized occupancy.
 - The vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances).
 - The project's affect on existing or awarded 9% tax credit properties.
- (d) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this Section. For rehabilitation and 100% special needs projects, the applicant must submit a market study that meets the requirements of Section 42(m)(1)(A)(iii) of the Code prior to issuance of a carryover allocation (unless the Agency requires an earlier submission date).
- (e) Applications for 100% special needs housing also will be eligible to earn points under this section. The score will be based on the needs analysis component of the targeting plan. Any points would be determined during the full application review process.

B. RENT AFFORDABILITY (MAXIMUM 65 POINTS)

1. FEDERAL RENTAL ASSISTANCE (MAXIMUM 20 POINTS)

- (a) A maximum of twenty (20) points will be awarded for a firm commitment that provides federal project-based rental subsidies for at least ninety-five percent (95%) of units; committed federal subsidies of at least twenty percent (20%) but less than 95% will be awarded ten (10) points. To receive points for U.S. Department of Housing and Urban Development (HUD) Section 8 project-based rental subsidies, applicants must submit a letter from the issuing authority (i) supporting the proposed development, (ii) representing that it has the proposed number of certificates available to convert to project based assistance, (iii) committing it to request HUD approval for the conversion, (iv) setting forth a timetable for the advertisement and approval process, (v) committing it to seek renewal of the subsidy contract for as long as possible subject to Congressional funding and (vi) stating that the proposed rents are reasonable (based on the information available).
- (b) Applicants must include a written agreement between the owner and a public housing authority (PHA). The agreement must commit (i) the PHA to include the development in any listing of housing opportunities where households with tenant-based subsidies are welcome, and (ii) the project's management agent to actively seek

referrals from the PHA to apply for units at the proposed development. If the PHA refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA. This requirement does not apply to projects with rental assistance provided through U.S. Department of Agriculture, Rural Development (RD).

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 30 POINTS)

- (a) Only loans from the following sources will be considered:
 - o the local PHA,
 - o Community Development Block Grant (CDBG) Small Cities program funds (for on-site improvements only),
 - o HUD Section 108, 202 or 811,
 - o Federal Home Loan Bank Affordable Housing Program,
 - o local government housing development funds and
 - o RD Section 515.

Other sources of public funding may qualify **PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE** by the Agency. (Approval of a particular source in prior years does not meet this requirement.) In order to qualify, loans must be listed as a source in the full application, have a term of at least 20 years and an interest rate less than or equal to two percent (2%).

- (b) Adjustments to the purchase price of the land by the seller, uncommitted RPP funds or other Agency loans, state credits and bond financing are not considered sources of mortgage subsidy.
- (c) Applications will be awarded five (5) points for having a commitment of at least \$100,000 in qualifying mortgage subsidy funds. Projects will earn a greater amount of points based on the total amount of funds per unit, as described below:

Funds/Unit	Points	\$10,000	20
\$5,000	10	\$11,000	22
\$6,000	12	\$12,000	24
\$7,000	14	\$13,000	26
\$8,000	16	\$14,000	28
\$9,000	18	\$15,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio initially approved by the lending source determines the score, unless a subsequent change results in fewer points. The amount of subsidy provided by a local government will be reduced by the amount that the project budget includes the following: any impact, tap or related fees charged by that local government and/or the cost of land sold by that local government in excess of the market value determined under Section VI(A)(4). For example, a project involving the following:

- 48 tax credit units and 16 market rate units,
 - a commitment of \$925,000 in qualifying funds, \$150,000 of which are from the city, and
 - tap fees of \$100,000 charged by the same city to the project
- will receive 24 points $[(925,000 - 100,000) / 64 = \$12,891 \text{ per unit}]$.

- (d) Projects funded entirely with equity and state tax credits (no grants or debt sources other than deferred developer fees) will be awarded 15 points. Any deferred fee must comply with Section VI(B)(5). These points and those awarded under subsection (2)(c) above are mutually exclusive.
- (e) In order to be eligible for points under this Section, applications for new construction tax exempt bond projects must meet one of the following requirements:
 - at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty (40%) of county median income.
- (f) Applications for NC Division of Community Assistance (DCA) CDBG funds must be submitted at the same time as the Agency's full application deadline and must be committed by June 11, 2004. Commitment of other local government funds may be delayed up to three weeks after the full application with prior approval by the Agency.

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

(Projects will be monitored for rent and occupancy restrictions for the period indicated in the extended use agreement.)

Applicants should understand that electing to meet the requirements of this Section will reduce the number of potential tenants for certain units, which may be reflected in the market score. The application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
 - Ten (10) points will be awarded if at least twenty-five percent (25%) of qualified units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
 - Five (5) points will be awarded if at least fifty percent (50%) of qualified units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- (b) If the project is in a Moderate Income county:
 - Fifteen (15) points will be awarded if at least twenty-five percent (25%) of qualified units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
 - Ten (10) points will be awarded if at least fifty percent (50%) of qualified units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (c) If the project is in a Low Income county, fifteen (15) points will be awarded for projects in which at least forty percent (40%) of qualified units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (d) In order to be eligible for tax credits, applications for new construction tax exempt bond projects must meet one of the following requirements:
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

4. COMMITMENT TO EXTEND LOW-INCOME OCCUPANCY

Applicants must agree to record a 30-year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner (a) will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code, (b) will not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder, and (c) will comply with other requirements under the Code, Plan other relevant statutes and regulations and all representations made in the project application. The Extended Use Agreement may also contain other provisions as determined by the Agency.

C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

1. NEGATIVE POINTS FOR PROJECT DEVELOPMENT COSTS

The Agency will assess negative points to applications using either the following "per unit" or "per net square foot" standards (total replacement costs less land and reserves) outlined in **Chart A** below, whichever is less. The point structure in **Chart B** will apply to the following: 1) detached single family or duplex developments with 25 units or less, 2) 100% severe mobility impairment housing, 3) HOPE VI projects 4) unique downtown circumstances and 5) projects utilizing historic tax credits. RPP loan funds will be limited by HOME Per-Unit Subsidy Limits and HOME Per-Unit Cost Limits. Copies of all executed change orders must be submitted to the Agency.

The equity raised from historic preservation tax credits will be subtracted from the total development cost before this calculation is made. Water and sewer tap fees and impact fees will also be subtracted from total development cost for this calculation provided that the applicant has included documentation from the local government verifying the amount of fees required.

CHART A			
Per Unit	OR	Per Net Sq. Ft.	Points
\$75,000		\$75	(-2)
\$78,000		\$78	(-4)

CHART B			
Per Unit	OR	Per Net Sq. Ft.	Points
\$87,000		\$87	(-2)
\$90,000		\$90	(-4)

IN ADDITION

\$81,000		\$81	(-6)		\$93,000		\$93	(-6)
\$84,000		\$84	(-8)		\$96,000		\$96	(-8)
\$87,000		\$87	(-10)		\$99,000		\$99	(-10)
\$90,000		\$90	(-15)		\$102,000		\$102	(-15)
\$93,000		\$93	(-20)		\$105,000		\$105	(-20)
\$96,000		\$96	(-30)		\$108,000		\$108	(-30)
\$99,000		\$99	(-40)		\$111,000		\$111	(-40)

Note: The Agency may compare what is represented in 2004 applications with the actual cost of construction as reflected in the final cost certification. In the event that a project's actual costs would have resulted in negative points that were not assessed in the 2004 cycle, those points may be applied to the application(s) of any Principal involved in any future year.

2. RESTRICTIONS ON RPP AWARDS

To receive an RPP loan, projects must not a) have total replacement costs (less reserves) per unit in excess of \$90,000 b) request RPP loan funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties or c) include market-rate units. Subsection (C)(2)(b) above does not apply to projects with funds committed by RD. Subsection (C)(2)(a) above does not apply to projects eligible for Chart B. The total RPP loan amount cannot exceed \$1 million per project.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) At least one Principal must have successfully developed, operated and maintained in compliance either (i) one North Carolina low-income housing tax credit development or (ii) eight separate low-income housing tax credit developments totaling in excess of 200 units. The development(s) must have been placed in service between December 1, 1997 and January 1, 2004. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:
- o be identified in the preliminary application,
 - o become a general partner or managing member of the ownership entity, and
 - o remain responsible for overseeing the development and operation of the project for a period of two (2) years after placed in service.

This requirement will not apply to HOPE VI developments. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals **must** disclose all previous participation in the low-income housing tax credit program. Additionally, all owners and Principals that have participated in an out of state tax credit allocation must complete the Authorization for Release of Information form and send it to each state identified.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of this Section due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must have at least a) one similar tax credit project in their current portfolio and b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist. Such certification must be from an organization accepted by the Agency (such as HCCP). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent who:

- (a) has been debarred or received a limited denial of participation in the past 10 years by any federal or state agency from participating in any Agency multifamily development program;

- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on an FHA-insured project, an RD funded rental project, a tax-exempt bond funded mortgage, an Agency loan, a tax credit project or any other publicly subsidized project (resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing disqualification);
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation and/or failed to fulfill one of the representations contained in an application for tax credits (this includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed);
- (e) has been found to be directly or indirectly responsible for any other project in which there is uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency; or
- (f) interferes with a tax credit application for which it is not an owner or Principal at public hearing or other official meeting.

E. UNIT MIX AND PROJECT SIZE

- 1. Ten (-10) points will be subtracted from any project where more than ten percent (10%) but less than twenty percent (20%) of the total units are market-rate units. Twenty (-20) points will be subtracted from any project where more than twenty percent (20%) of the total units are market-rate units. These penalties will not apply where, as of the full application, the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible.
- 2. New construction 9% credit projects may not exceed 100 units.
- 3. New construction bond financed projects may not exceed 180 units.

The Agency reserves the right to waive the penalties and limitations in this Section for proposals that reduce low-income and minority concentration.

F. SPECIAL CRITERIA AND TIEBREAKERS (MAXIMUM 30 POINTS)

- 1. Fifteen (15) points will be awarded to projects that have (a) an obligation of funds from RD Section 515, the HUD 202 or 811 programs, including project based rental assistance appropriate for the project, or (b) a written commitment under the RD Section 538 program.
- 2. Ten (10) points will be awarded to applications if all of the following apply:
 - (a) the project is within the area identified by a community revitalization plan (“CRP”);
 - (b) the CRP was officially adopted by a local government after January 1, 1998;
 - (c) one of the policy goals is the creation of new or replacement rental housing;
 - (d) the project is in a Qualified Census Tract and/or the CRP is primarily focused on an existing residential neighborhood;
 - (e) the project is consistent with and contributes to the CRP;
 - (f) there is a specific timetable and funding commitment; and
 - (g) some of the progress or improvement described in the CRP is visibly evident.
- 3. Five (5) points will be awarded to projects designed to increase the stock of housing accessible to those with mobility impairments. To receive bonus points, five percent (5%) of all project units must:

- (a) be fully accessible according to the standards set forth in Volume 1-C (1999) of the North Carolina State Building Code, (Chapter 30, Multi-Family Dwellings),
- (b) have at least one bathroom with a toilet located in a five foot by five foot clear floor space (may overlap with the five foot turning diameter described in Chapter 30), with no overlapping elements or fixtures; the toilet must be positioned in a corner with the centerline of the toilet bowl 18 inches from the sidewall, and
- (c) have at least one bathroom with a 36 inch by 60 inch (minimum size) curbless, roll-in shower. Such showers must also meet the requirements for accessible controls as required by Volume 1-C.

At least one unit in each class of fully accessible units must meet the above requirements. Unit classes are measured by the number of bedrooms, pursuant to Volume 1-C (1999) of the North Carolina State Building Code (Chapter 30, Section 30.3.2.) These units are in addition to mobility impaired units required by federal and state law (including building codes).

- 4. All projects will be required to target the greater of five (5) units or ten percent (10%) of the total units to persons with disabilities or homeless populations. (The five unit minimum does not apply to applications without federal project-based rental assistance.) Projects that are targeting units under this Section are not required to provide onsite supportive services or a service coordinator. Applications must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS).

At a minimum, Targeting Plans must include:

- (a) A local housing needs assessment for the targeted population developed in partnership with the local lead agency.
- (b) A description of how the development will meet the needs of the targeted tenants including how the units will be made affordable to persons with extremely low incomes, unit size, access to supportive services, transportation, proximity to community amenities, etc.
- (c) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (d) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include a description of the tenant referral process and how the local lead agency will remain linked to the project for the entire compliance period.
- (e) Certification that participation in supportive services will not be a condition of tenancy (not required for projects where all of the units are providing transitional housing for the homeless).
- (f) Agreement that for a period of ninety (90) days after the initial rent-up period begins, establishing a preferential leasing opportunity for the number of units specified in the application for persons with disabilities.
- (g) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, based upon the minimum number of units specified in your application.
- (h) Agreement to affirmatively market to persons with disabilities.
- (i) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (j) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSD benefits.

The requirements of this Section IV(F)(4) may be fully or partially waived to the extent the Agency and DHHS determine that they are not feasible. All materials required under this Section must be submitted to DHHS by the full application due date. A detailed description of the elements to be addressed in the Targeting Plan is included in **Appendix D**.

5. Tiebreaker Criteria: The following will be used to award credits in the event that the final scores of more than one project are identical.
- (a) First Tiebreaker - The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.
 - (b) Second Tiebreaker - Tenants with Children: Projects that can serve tenant populations with children. Developments will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
 - (c) Third Tiebreaker - Tenant Ownership: Projects that are intended for eventual tenant ownership. Such developments must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded the credits.

G. DESIGN STANDARDS (MAXIMUM 80 POINTS)

All proposed measures must be shown on the plans or in specifications in the application in order to receive points.

A maximum of 80 points will be awarded for new construction projects based on evaluation of the site plan design and layout, building and floor plan design and construction characteristics as they relate to the development cost per unit. Design standards are found in **Appendix B** and must be used for all projects receiving low-income housing tax credits and/or RPP funding or points may be deducted for non-compliance.

1. Site plan considerations: A maximum of 15 points will be given for projects which
- Propose an attractive, scattered building layout focusing on visual appeal and privacy;
 - Propose site amenities, including playgrounds, gazebos, garden spots, walking trails, picnic areas, ball fields, basketball/tennis courts and exercise rooms, have natural areas with trees between buildings (for new construction); create accessible walks linking buildings to each other, to common areas and to parking; have large open spaces for recreational activities, have a well-designed entry to the site with attractive signage, lighting and landscaping.

In order to receive points, the items listed above must be clearly indicated on the site drawings.

2. Building and floor plan design: A maximum of 45 points will be given for projects which
- Propose creative and versatile architectural designs. Examples of exterior building designs include broken roof lines, front gables, dormers or front extended facades, wide banding and vertical and horizontal siding applications, some brick veneer, front porches and attractive deck rail patterns.
 - Propose open, flowing floor plans. Examples include spacious kitchens, bathrooms, living rooms and dining rooms, dwelling units that exceed minimum square footages, bedrooms that exceed minimum square footages, bathrooms that are large with vanities and open floor spaces, kitchens that provides an abundance of counter top working space and cabinets, availability of storage space other than bedroom closets, and the adequacy of closet space, including large walk-in closets.
3. Construction characteristics: A maximum of 20 points will be given to projects which
- Propose low maintenance, high durability, energy efficient products, and quality components. Examples include: High-grade vinyl or VC tile in kitchens, bathrooms, entryways, and laundry areas.
 - Propose energy efficient components that exceed Agency and/or building code minimum standards.
 - Propose measures to provide good attic and roof ventilation, use vinyl or aluminum windows and steel insulated exterior doors.
 - Propose to use quality exterior siding, such as vinyl, hardiplank, or brick veneer and have pre-finished aluminum exterior trim, including fascia, soffit, and porch posts.
4. Completion of previously approved projects: Negative points will be assessed for projects with owners, or Principals of prior project(s) that were not built in accordance with the plans and specifications on which such prior project(s)' Design Standards score was based, if deviation from such plans and specifications results in conditions that would justify a reduction in that prior project(s)' original Design Standards score(s). The number of negative points assessed to the project in the current year will be equal to the cumulative number of points by which each such prior project's original Design Standards score would have been so reduced to reflect the deviation, adjusted to reflect any change in the scale of

the Design Standards scoring. For example, if the reduction in the prior project's Design Standards score as a result of the deviation from its plans and specifications is determined to be 10 points based on a scale of 50 maximum Design Standards points at the time such prior project was awarded credits, if there is a current scale of 100 maximum Design Standards points, the negative points assessed to the current project based on that prior project's deviation from its plans and specifications would be 20 points. Design and construction changes approved in writing by the Agency will not result in any negative points assessed under this Section.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

In order to be eligible for funding under Section II(B), a project must:

- have committed mortgage subsidies from a local government in excess of \$5,000 per unit or federal project-based rental assistance for at least sixty percent (60%) of the total units,
- have been placed in service on or before December 31, 1986,
- require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment approved by the Agency),
- not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- not be feasible using tax exempt bonds (as determined by the Agency),
- have less than \$7 million total or \$100,000 per unit in replacement costs.

The assessment must be performed by a licensed architect or engineer and involve the physical inspection of the site, amenities, dwelling units and any common areas. Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the Project Development Cost Description.

The thresholds and criteria for rehabilitation applications utilizing tax exempt bonds are in **Appendix G**.

The Agency will evaluate applications based on the following criteria, which are listed in order of importance. Each will serve both to determine allocations and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories.

1. The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed existing housing. However, buildings that are deteriorated to the point of requiring demolition will not be eligible for credits under this Section.
2. The Agency will give priority to applications that propose a scope of work appropriate to the building(s), as reflected in the Physical Needs Assessment. (Proposals may not involve unnecessary work.) Specifically, proposals should involve the following:
 - Making "common areas" handicap accessible, creating or improving sidewalks, installing new roof shingles, adding gutters, sealing brick veneers, applying exterior paint, and resurfacing or re-paving parking areas.
 - Improving site and exterior dwelling lighting, landscaping/fencing, and installing high-quality vinyl or hardiplank siding.
 - Adding gables, porches, dormers or roof sheds.
 - Use energy-efficient related products to replace inferior ones, including insulated windows and doors, and adding additional insulation.
 - Improving heating and cooling units, plumbing fixtures, water heaters, toilets, sinks, faucets and tub/shower units.
 - Improving quality of interior conditions and fixtures, including carpet, vinyl, interior doors, painting, drywall repairs, cabinets, appliances, light fixtures and mini-blinds.
 - Where possible, upgrading bathrooms pursuant to Section IV(F)(3).
3. Applications will have a reduced likelihood of being awarded credits to the extent that the purpose is to subsidize an ownership transfer.
4. Shortcomings in the above three criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent a) conversion of units to market rate rents or b) loss of government resources (including past, present and future investments).
5. The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
6. Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan and/or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded credits.

7. Applications will have a reduced likelihood of being awarded credits based on the number of tenants that would be permanently relocated (including market-rate).
8. The Agency will give preference to applications based on the quality of and degree of effort proposed in the temporary and permanent relocation plans.
9. While allocation of rehabilitation tax credits is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

I. PRIORITY FOR ALLOCATION OF BOND CAP

Applicants proposing to use tax-exempt bonds with 4% tax credits must meet all of the requirements of the Plan and **Appendix G** (incorporated herein by reference) to claim such credits. The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall HOPE VI revitalization effort.
2. Rehabilitation projects.
3. Adaptive re-use projects.
4. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, allocation priority will be based on the relevant scoring and threshold requirements of Section IV.

V. APPLICATION PROCEDURES AND REQUIREMENTS

A. GENERAL

1. The Agency may require applicants to submit any information, letter or representation relating to Plan requirements or point scoring as part of the application process. Unless otherwise noted, the Agency may elect to not consider information submitted after the relevant deadline.
2. Any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may result in a revocation of a credit allocation.
3. The Agency may elect to treat applications involving more than one site or population type (family/elderly) as separate for purposes of the Agency's preliminary application process. Each application would require a separate initial application fee. Projects may be considered one application in the full application submission if all sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of the tax credit allocation.

B. APPLICATION PROCESS

1. Applications, correspondence and supporting materials may be submitted to the Agency as follows:

Deliver to:	Mail to:
North Carolina Housing Finance Agency	North Carolina Housing Finance Agency
Rental Investment	Rental Investment
3508 Bush Street	P.O. Box 28066
Raleigh, NC 27609	Raleigh, NC 27611-8066

2. The Agency will notify the appropriate unit of government about the project after submission of the full application. The Agency reserves the right to reject applications opposed in writing by the chief elected official (supported by the council or board), but is not obligated to do so.

3. Applicants may be assessed a fee of up to \$500 for each instance of failure to comply with a written requirement of the tax credit application process (whether or not such requirement is in the Plan).
4. The Agency will send site score information to each applicant (upon request) after publication. The market analyst will send studies to the Agency and applicant.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. **Projects with Historic Tax Credits:** Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.
2. **Nonprofit Set-Aside:** For purposes of being considered as a nonprofit sponsored application under Section II(C), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must: (a) be qualified under Section 501(c)(3) or (4) of the Code, (b) be domesticated in North Carolina for at least 12 months prior to submitting an application, (c) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period, (d) have as one of its exempt purposes the fostering of low-income housing (e) own, directly or indirectly, an equity interest in the applicant and (f) be a managing member or general partner of the applicant.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. **Environmental Hazards:** All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
4. **Appraisals:** The Agency will not allow the project budget to include more for land costs than its appraised market value. Any project budgeting more than \$15,000 per acre toward land costs must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may require appraisals in its discretion where cost per acre is below this amount. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.
5. **Concentration:** Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.
6. **Displacement:** In every instance of tenant displacement, the applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project's development budget. Applicants must also comply with either the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 if using RPP or federal funds, or **Appendix F** if not.
7. **Tax Information Authorization:** Applicants must submit an executed IRS Form 8821 with their full applications; every owner should submit a separate form.
8. **Feasibility:** The Agency will not allocate tax credits or RPP funding to an application that will have difficulty being completed and/or operated for the compliance period. Examples include projects that may not secure an equity investment or maintain adequate cash flow.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive credits or RPP funding.

1. Loan Underwriting Standards:

Projects applying for tax credits only will be underwritten with rents escalating at three percent (3%) and operating expenses escalating at four percent (4%).

All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect the greater of a) \$150 per unit per year of net cash flow, or b) a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. Subsection (B)(1)(a) above does not apply to projects with rental assistance provided through RD.

RPP loans will be underwritten using a 20 year term and a two percent (2%) interest rate. The Agency may, in its discretion, alter these terms to ensure project feasibility. Rents for projects utilizing HOME funds will not exceed the Fair Market Rents established by HUD. Underwriting of applications with a commitment from RD will incorporate the requirements of that program, and any RPP loan will have a 30 year term (fully amortizing) and zero percent (0%) interest.

The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. Operating Expenses:

Assumptions for projects over 16 units:

- New construction (excluding adaptive re-use): \$2,300 per unit per year not including taxes, reserves and resident support services
- Renovation (includes rehabilitation and adaptive re-use): \$2,500 per unit per year not including taxes, reserves and resident support services.

Owner projected operating expenses will be used if they are higher than Agency minimums. The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. Equity Pricing:

The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the applicant's projection.

Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

Applicants should use no more than the April 2004 tax credit rate in preparing equity estimates.

4. Reserves:

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount should be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds should be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the project development costs. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency 90 days prior to the expected placed in service. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project operating reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses, and must be maintained for the duration of the low-income use period.

Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits.

The operating reserve can be funded by deferring the developer's fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

For applicants seeking 4% housing credits with tax-exempt bond financing, the operating reserve will be based on four month's debt service and operating expenses. The period for which this reserve must be maintained can be established by the bond issuer.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD, and the replacement reserve will not escalate annually.

Funds remaining in the operating and replacement reserve accounts at the end of the RPP loan term must be used for project maintenance costs approved by the Agency or applied against the loan.

5. Deferred Developer Fees:

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within 10 years, pursuant to the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

6. Financing Commitment:

- (a) For all projects proposing **private** permanent financing, a letter of intent is required. This letter should clearly state the term of the loan is at least 18 years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for 18 years. The bank must complete a cover letter using the format approved by the Agency, and submit it with the letter of intent. Applicants must submit a letter of commitment for financing within 90 days of receiving an award of tax credits.
- (b) Other than as stated in Section IV(B)(2)(f), all projects proposing **public** permanent financing, binding commitments are required to be submitted by the full application due date. All loans must have a fixed interest rate and no balloon payments for at least 18 years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.

- (c) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may, in its discretion, waive this limitation if the project otherwise demonstrates financial feasibility.

7. Developer/Builder Fees:

- (a) Developer's fees shall be a maximum of fifteen percent (15%), or a lesser percentage adjusted for project size as described below. The Agency calculates developer's fees by adding lines 2-36 less lines 8 and 9 from the Project Development Cost Description in the application and multiplying by the applicable percentage to determine the maximum allowable developer fee.

up to 60 units	15%
61-80 units	12.5%
81-100 units	10%
101-120 units	7.5%
121 units plus	5%

In addition to the fees described above, a maximum developer's fee of four percent (4%) is allowed on the acquisition cost of buildings (not including land value/cost).

- (b) Builder's general requirements shall be limited to six percent (6%) of hard costs.
 - (c) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) OF TOTAL HARD COSTS including general requirements.
 - (d) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).
8. Consulting Fees: Consulting fees for a project must be paid out of developer fees, so that the aggregate of any consulting fees and developer fees is no more than the maximum developer fee allowed to that project.
9. Architects' Fees: For new construction projects, the architects' fees, including design and inspection fees, shall be limited to four percent (4%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the Project Development Cost Description).
10. Investor Services Fees: Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.
11. Project Contingency Funding: All new construction projects shall have a hard cost contingency line item of NO LESS OR NO MORE THAN three percent (3%) of total hard costs, including general requirements, builder profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of NO LESS OR NO MORE THAN six percent (6%) of total hard costs.
12. Project Ownership: There must be common ownership between all units and buildings within a single project for the duration of the compliance period.
13. Section 8 Project-Based Rental Assistance: For all projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. GENERAL REQUIREMENTS

1. The tax credit reservation amount will be the total anticipated qualified basis amount multiplied by eight and one half percent (8.5%), or three and three quarters percent (3.75%) for the 4% credit. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable federal rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code.
2. Ownership entities must a) expend ten percent (10%) of the project's reasonably expected basis by a date to be determined by the Agency and b) submit to the Agency a completed carryover agreement and cost certification by November 19, 2004. (This requirement also applies to projects with partial allocations.) Failure to meet these deadlines will preclude the project from participation in the state credit program. Pursuant to Section VI(B)(6), the Agency may determine that an awarded application listing state tax credits as a source of funding is ineligible for allocation due to failure to comply with the requirements of this Section. Projects will be required to elect a project-based allocation.
3. Once approved, the ownership entity will proceed to acquire, construct or rehabilitate the project. The ownership entity is required to update the Agency on the progress of development by submitting a Project Status Report. Sixty days prior to occupancy, the Agency must be notified in writing of the targeted project completion date. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a completed Final Cost Certification form. The cost certification must include all project costs along with a certification for any subsidies the project will receive. Final IRS Section 1.42-17 Regulations effective January 1, 2001 require that the taxpayer of all projects in excess of ten units, which are placed in service after January 1, 2001, regardless of the year of credit allocation, submit a schedule of project costs accompanied by a Certified Public Accountant's (CPA) audit report that details the project's total costs as well as those that may qualify for inclusion in eligible basis under Section 42(d) of the Code. A third party CPA verification is required for cost certification on two or more units. The Agency may require an independent cost analysis.
4. Projects must meet all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act; the Agency may treat any failure to do so as a violation of the Plan.
5. Allocated credits may also be returned to the Agency under the following conditions as further described in Treasury Regulation Section 1.42-14: (a) credits have been allocated to a project building that is not a qualified building within the time period required by the Code, for example, because it is not placed in service within the period required under the Code, (b) credits have been allocated to a building that does not comply with the terms of its allocation agreement, (c) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (d) by mutual written agreement between the allocation recipient and the Agency. Credits that are returned before October 1 in any calendar year are treated as credits returned in that calendar year, and all or a portion of such credits will be reallocated to the next highest ranked project(s) without a full allocation in that region and in that calendar year, pursuant to the terms of the Plan or, in the Agency's discretion, when appropriate and possible, carried over for allocation in the next calendar year. With respect to credits that are returned after September 30 in any calendar year, all or a portion of such credits may also be reallocated to the next ranked project(s) without a full allocation in that calendar year pursuant to the terms of the Plan, or all or a portion of such credits may be treated by the Agency, in its discretion, where appropriate and possible, as credits that are returned on January 1 of the succeeding calendar year to be allocated in that year.

By the time of the earlier of the date the project is placed in service, in the case of a carryover allocation, or by the 10% cost certification, (a) the ownership entity must have been legally formed, and (b) qualifying expenditures must have been incurred in the ownership entity's name or incurred by the ownership entity pursuant to a reimbursement agreement with a third party and such third party has incurred such expenditures by the time of 10% cost certification, and (c) the ownership entity must have a tax identification number.

6. The Agency may conduct construction inspections for adherence to approved final plans and specifications.
7. The owner of the project must sign and record the Extended Use Agreement in the county in which the project is located by the end of the first taxable year in which the credits allocated to the project are taken. The owner must have good and marketable title at that time, and must obtain the consent of any lienholder on the project property recorded prior to the Extended Use Agreement (other than a lienholder relative to the financing of the construction of the project that by its terms will be cancelled within one year of the last building in the project being placed in service) to be bound by the terms of this Extended Use Agreement.
8. The Agency may revoke credits after the project has been placed in service in accordance with the Code if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction.
9. Federal form 8609 will not be issued until:

- (a) the owner and/or management company produces evidence of attending a low-income housing tax credit compliance seminar sponsored either by the Agency or a sponsor acceptable to the Agency within the last 12 months;
- (b) the Agency confirms that the monitoring fees have been paid and that the project has adhered to all representations made in the application (including design elements); and
- (c) the project demonstrates that it will meet all relevant Plan requirements.

The Agency may require evidence of escrowed funds to complete landscaping.

10. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria used to award bonus points, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in the Code and from time to time amended.

NOTE: Applicants are advised that some portion or all of a project's application may be subject to disclosure to the public under the North Carolina Public Records Act.

B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under G.S. 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

- 1. Loan Option: Loans made by the Agency pursuant to G.S. 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.
- 2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under G.S. 105-129.42(g)(1) will not occur until all of the following requirements have been met:
 - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
 - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
 - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, including Section VII(A)(2), to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may, in the Agency's discretion, be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

C. COMPLIANCE MONITORING

Applicants will be required to utilize the TCR Online Internet reporting system (or other system as designated by the Agency) to update the Agency database on project and building information and unit activity. The database should be updated within 30 days of any change in information. Applicants will also be required to submit to the Agency a copy of the IRS form 8609 and Schedule A filed with the IRS for the first year credits are claimed.

The Agency will conduct on-site inspections and desk audits of at least one third of the projects under its jurisdiction. If projects are determined to be in noncompliance, monitoring may occur more often. The desk audit and inspection will include a project review of twenty percent (20%) of the units for the following:

- Tenant eligibility certifications
- Supporting eligibility documentation
- Leases
- Rent record (including utility documentation)
- Compliance with supportive services commitments
- Compliance with special populations targeting requirements (if applicable)
- Compliance with other commitments made in the application
- Inspection for compliance with HUD Uniform Physical Condition Standards

All projects, at a minimum, are expected to meet HUD's Section 8 Uniform Physical Condition Standards and comply with local and state health and building codes throughout the compliance period. A Memorandum of Understanding (MOU) has been executed with RD to accept their physical inspections in lieu of performing the inspection. The Agency will determine when to utilize the MOU. In any event, the Agency will continue to monitor compliance documentation.

The Agency monitor rent levels relative to current median income levels. The Agency may require a window of affordability in calculating rents; owners should refer to the relevant Qualified Allocation Plan.

The county designation will be reviewed on an annual basis and published each year in the Plan. Tenant rents can not exceed the initial window of affordability from the original underwriting for the property without written permission of the Agency. In the event the county designation changes from low to high or high to low, requiring a change in the window of affordability, the Agency will not require a reduction in the existing rent structure. However, rent increases can only be implemented to the extent that they comply with the current required calculation. The Agency may waive this restriction if the ownership entity submits a written request and documentation demonstrating that the property will be financially jeopardized, and that it is unable to pay its operating expenses and debt service requirements while maintaining at least a 1.15 debt coverage ratio.

In mixed-use properties, 100% of the units may be monitored in any building receiving an allocation of tax credits.

The Agency will be monitoring projects to ensure the required monthly deposits to reserve for replacement accounts are made in accordance with the General Requirements.

During the compliance period the Committee and Agency reserve the right to perform an audit of any project that has received an allocation of tax credits. This audit may include an inspection of all buildings, and a review of all tenant records and any document relating to an application for an allocation of credits

The ownership entity of a low-income housing project must keep records (as defined below) for each building within a particular development. These records must be retained by the owner for a minimum of six (6) years beyond the owner's income tax filing date (plus any extensions) for that year. However, first year project records must be maintained for six (6) years beyond the tax filing date of the final year of the project's compliance period(21 years). The ownership entity must annually report to the Agency and maintain records for each qualified low-income building in the project showing:

- Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each such unit)
- Percentage of residential rental units in the building that are low-income units
- Rent charged on each residential rental unit in the building (including utility allowances)
- The size of each low-income household
- Low-income unit vacancies in the building and documentation of when and to whom the next available units were rented
- Income certification and student status of each low-income tenant
- Documentation to support each low-income tenant's income certification
- Character and use of the nonresidential portion of each building included in the building's eligible basis (this includes separate facilities such as clubhouses or swimming pools whose eligible basis is allocated to each building)

Failure to report annually to the Agency is deemed as noncompliance and is reportable to the IRS.

It is the responsibility of the ownership entity to certify annually to the Agency that the project meets the requirements of whichever set-aside of the Code is applicable to the project. Failure to certify is deemed as noncompliance and reportable to the IRS. This annual certification requires that the ownership entity certify that:

- The project meets the minimum requirements of the 20/50% or 40/60% test under the Code
- There has been no change in the applicable fraction as defined in the Code for any building in the project
- The applicant has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, a statement from the PHA certifying the household's size and amount of gross income; or the owner has a recertification waiver letter from the IRS in good standing that waives the requirement to obtain third party verifications at recertification and has received an annual Tenant Income Certification from each low-income household, and documentation to support the certification at their initial occupancy
- Each low-income unit was rent restricted in accordance with the Code
- All units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless)
- No finding of discrimination under the Fair Housing Act has occurred for the Project (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court)
- Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or unit in the project
- There has been no change in the eligible basis (as defined in the Code) of any building in the project since last certification
- All tenant facilities included in the eligible basis, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings
- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income
- If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income
- An extended low-income housing commitment was in effect, including the requirement that an ownership entity cannot refuse to lease a unit because the applicant holds a Section 8 voucher or certificate of eligibility; neither the ownership entity nor the management agent has refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment
- If the applicant received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified nonprofit organizations" under Section 42(h)(5) of the Code and its nonprofit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code
- There has been no change in the ownership or management of the project

The ownership entity of any exempted project must certify to the Agency on an annual basis that the project is in compliance with the requirements of the Code, Rural Development assistance or the tax-exempt bond financing guidelines, as applicable. The ownership entity must inform the Agency of any noncompliance or if the owner is unable to make one or more of the required certifications.

The Agency may elect to subcontract the compliance monitoring procedure to other agents.

In the event that any noncompliance with the Code is identified, a discrepancy letter detailing the noncompliance will be forwarded to the ownership entity and management company of the project.

The ownership entity must then respond in writing to the Agency within thirty (30) days after receipt of the discrepancy letter. The response must address all discrepancies individually and must indicate the manner in which corrections will be made. The owner will then have a cure period of sixty (60) days from the date of the discrepancy letter to correct the noncompliance and to provide the Agency with any required documentation or certification. The cure period may be extended for periods of up to six (6) months. Extensions will be based on a determination by the Agency that there is good cause for granting the extension.

The Agency will notify the Internal Revenue Service of any noncompliance within forty-five (45) days after the expiration of the cure period. All corrections made by the ownership entity within the cure period will be acknowledged within this notice. A copy of the applicant's response to the noncompliance will accompany the notice to the IRS.

If a potential noncompliance is discovered during a compliance monitoring review, the ownership entity will be required to have its managing agent attend a compliance training session within two months following the compliance monitoring review.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity that is applying for the tax credits and/or any RPP loan funds, as applicable.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person and/or such person's personal property from their current residence.

Elderly Housing: Owners may choose one of the established definitions recognized under federal Fair Housing Law. Owners should read the law and obtain legal guidance to determine compliance.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Homeless Populations: People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or supportive housing but originally came from places not meant for habitation or emergency shelters.

Housing Quality Standards: Minimum physical standards established by HUD.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the development, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Noncompliance (for purposes of deducting points from an application): An event occurring after June 30, 1993 that results in the issuance of an 8823 for any of the following: 1) Failure to maintain accurate records for each unit, 2) Failure to rent to a Section 8 voucher or certificate holder, 3) Rents for the development are not properly restricted, 4) The development has transient occupancy, 5) Any unit for which low-income housing tax credits were allocated is not available to the general public, 6) There are ineligible tenants found to be occupying qualifying units, 7) Failure of the development to maintain minimum housing quality standards, or 8) Failure to re-certify low-income tenants on an annual basis.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (G.S. 168A-3 (7a))

Principal: Principal includes (1) all such persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the **lesser of twenty-five percent (25%)** of the development fee for such project or **\$100,000**, and (2) all affiliates of such persons or entities in clause (1) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the **lesser of twenty-five percent 25%** of the development fee for such project or **\$100,000**.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rehabilitation: Replacement of one or more major building components in one or more residential buildings. Major building components include roof structures, wall or floor structures, foundation, plumbing system, electrical system, central heating and cooling systems.

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing administered and serviced by the Agency.

Stabilized Occupancy: Maintenance of at least ninety-three percent (93%) occupancy for six consecutive months.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

- State
- Local
- Substantive (>\$3,000,000)
- None

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rule cited as 02 NCAC 09B .0116.

Proposed Effective Date: March 1, 2004

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than November 18, 2003 to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: The proposed rule updates adoptions by reference of federal standards for animal feed and medical gases.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rule by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Written comments may be submitted to: David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125, ext. 249, fax (919) 716-0105, and email david.mcleod@ncmail.net.

Comment period ends: January 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09B - RULES AND STANDARDS ADOPTED BY REFERENCE

SECTION .0100 - ADOPTIONS BY REFERENCE

02 NCAC 09B .0116 ADOPTIONS BY REFERENCE

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

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

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

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

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health, Education and Welfare, Food and Drug Administration. Copies of this document may be obtained from the National Technical Information Service, Attention: Orders Department,

PROPOSED RULES

5285 Port Royal Road, Springfield, VA 22161, at a cost of sixty-one dollars (\$61.00) for Volume I and two hundred twenty-four dollars (\$224.00) for Volume II.

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

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

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Meat and Poultry Inspection Program, Washington, DC. Copies of this document may be obtained from the USDA-Food Safety and Inspection Service, ALA Room 80, South Building, 14th and Independence Avenues, Southwest, Washington, DC 20250, at no charge.

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

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

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

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

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," E. H. Lennette, Balows, et al., Editors, published by the American Society for Microbiology. Copies of this document

may be obtained from the American Society for Microbiology, PO Box 605, Herndon, VA 22070, at a cost of ninety-eight dollars (\$98.00).

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

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

Part	Subject of Part
(1)	1.1 General
(2)	1.3 Labeling - Definitions
(3)	1.20 Presence of Mandatory Label Information
(4)	1.21 Failure to Reveal Material Facts
(5)	1.24 Exemptions from Required Label Statements
(6)	1.31 Package Size Savings
(7)	1.35 "Cents-off," or Other Savings Representations
(8)	2.25 Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(9)	2.35 Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(10)	7.12 Guaranty
(11)	7.13 Suggested Forms of Guaranty
(12)	70 Color Additives
(13)	70.3 Definitions
(14)	70.5 General Restrictions on Use
(15)	70.10 Color Additives in Standardized Foods, New Drugs, and Antibiotics
(16)	70.11 Related Substances
(17)	70.20 Packaging Requirements for Straight Colors (Other Than Hair Dyes)
(18)	70.25 Labeling Requirements for Color Additives (Other Than Hair Dyes)
(19)	73 Listing of Color Additives Exempt from Certification
(20)	74 Listing of Color Additives Subject to Certification
(21)	81 General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics
(22)	82 Listing of Certified Provisionally Listed Colors and Specifications

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

PROPOSED RULES

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

Part	Subject of Part
(1)	100 General
(2)	101 Food Labeling (Except 101.11 and 101.103)
(3)	102 Common or Usual Name for Nonstandardized Foods
(4)	103 Quality Standards for Foods with No Identity Standards
(5)	104 Nutritional Quality Guidelines for Foods
(6)	105 Foods for Special Dietary Use
(7)	106 Infant Formula Quality Control Procedures
(8)	107 Infant Formula
(9)	108 Emergency Permit Control
(10)	109 Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material
(11)	110 Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food
(12)	113 Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers
(13)	114 Acidified Foods
(14)	120 Hazard Analysis and Critical Control Point (HACCP) Systems
(15)	123 Frozen Raw Breaded Shrimp
(16)	129 Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C .0700 - Bottled Water)
(17)	130 Food Standards: General
(18)	131 Milk and Cream
(19)	133 Cheeses and Related Cheese Products
(20)	135 Frozen Desserts
(21)	136 Bakery Products
(22)	137 Cereal Flours and Related Products
(23)	139 Macaroni and Noodle Products
(24)	145 Canned Fruits
(25)	146 Canned Fruit Juices
(26)	150 Fruit Butters, Jellies, Preserves, and Related Products
(27)	152 Fruit Pies
(28)	155 Canned Vegetables
(29)	156 Vegetable Juices
(30)	158 Frozen Vegetables
(31)	160 Eggs and Egg Products
(32)	161 Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)
(33)	163 Cacao Products
(34)	164 Tree Nut and Peanut Products
(35)	165 Nonalcoholic Beverages
(36)	166 Margarine
(37)	168 Sweeteners and Table Syrups

(38)	169 Food Dressings and Flavorings
(39)	170 Food Additives
(40)	172 Food Additives Permitted for Direct Addition to Food for Human Consumption
(41)	173 Secondary Direct Food Additives Permitted in Food for Human Consumption
(42)	174 Indirect Food Additives: General
(43)	175 Indirect Food Additives: Adhesive Coatings and Components
(44)	176 Indirect Food Additives: Paper and Paperboard Components
(45)	177 Indirect Food Additives: Polymers
(46)	178 Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers
(47)	179 Irradiation in the Production, Processing and Handling of Food
(48)	180 Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study
(49)	181 Prior-Sanctioned Food Ingredients
(50)	182 Substances Generally Recognized as Safe
(51)	184 Direct Food Substances Affirmed as Generally Recognized as Safe
(52)	186 Indirect Food Substances Affirmed as Generally Recognized as Safe
(53)	189 Substances Prohibited from Use in Human Food
(54)	193 Tolerances for Pesticides in Food Administered by the Environmental Protection Agency

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of forty-two dollars (\$42.00).

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

Part	Subject of Part
(1)	200 General
(2)	201 Labeling
(3)	202 Prescription Drug Advertising
(4)	210 Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General
(5)	211 Current Good Manufacturing Practice for Finished Pharmaceuticals
(6)	225 Current Good Manufacturing Practice for Medicated Feeds
(7)	226 Current Good Manufacturing Practice for Medicated Premixes
(8)	250 Special Requirements for Specific Human Drugs
(9)	290 Controlled Drugs
(10)	299 Drugs; Official Names and

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Established Names

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of seven dollars (\$7.00).

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

Part	Subject of Part
(1)	300 General
(2)	310 New Drugs
(3)	312 New Drugs for Investigational Use
(4)	314 New Drug Applications
(5)	320 Bioavailability and Bioequivalence Requirements
(6)	329 Habit-Forming Drugs
(7)	330 Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(8)	331 Antacid Products for Over-the-Counter (OTC) Human Use
(9)	332 Antiflatulent Products for Over-the-Counter Human Use
(10)	361 Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(11)	369 Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(12)	429 Drugs Composed Wholly or Partly of Insulin
(13)	430 Antibiotic Drugs: General
(14)	431 Certification of Antibiotic Drugs
(15)	432 Packaging and Labeling of Antibiotic Drugs
(16)	433 Exemptions from Antibiotic Certification and Labeling Requirements
(17)	436 Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs
(18)	440 Penicillin Antibiotic Drugs
(19)	442 Cepha Antibiotics
(20)	444 Oligosaccharide Antibiotic Drugs
(21)	446 Tetracycline Antibiotic Drugs
(22)	448 Peptide Antibiotics
(23)	449 Antifungal Antibiotics
(24)	450 Antitumor Antibiotic Drugs
(25)	452 Macrolide Antibiotic Drugs
(26)	453 Lincomycin Antibiotic Drugs
(27)	455 Certain Other Antibiotic Drugs
(28)	460 Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease

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

(\$36.00).

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

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

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

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

Part	Subject of Part
(1)	500 General
(2)	501 Animal Food Labeling
(3)	502 Common or Usual Names for Nonstandardized Animal Foods
(4)	505 Interpretive Statements Re: Warnings on Animal Drugs for Over-the-Counter Sale
(5)	507 Thermally Processed Low-Acid Animal Foods Packaged in Hermetically Sealed Containers
(6)	508 Emergency Permit Control
(7)	509 Unavoidable Contaminants in Animal Food and Food-Packaging Material
(8)	510 New Animal Drugs
(9)	511 New Animal Drugs for Investigational Use
(10)	514 New Animal Drug Applications
(11)	520 Oral Dosage Form New Animal Drugs Not Subject to Certification
(12)	522 Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification
(13)	524 Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification
(14)	526 Intramammary Dosage Forms Not

PROPOSED RULES

- (15) 529 Subject to Certification
Certain Other Dosage Form New
Animal Drugs Not Subject to
Certification
- (16) 536 Tests for Specific Antibiotic Dosage
Forms
- (17) 539 Bulk Antibiotic Drugs Subject to
Certification
- (18) 540 Penicillin Antibiotic Drugs for
Animal Use
- (19) 544 Oligosaccharide Certifiable
Antibiotic Drugs for Animal Use
- (20) 546 Tetracycline Antibiotic Drugs for
Animal Use
- (21) 548 Certifiable Peptide Antibiotic Drugs
for Animal Use
- (22) 555 Chloramphenicol Drugs for Animal
Use
- (23) 556 Tolerances for Residues of New
Animal Drugs in Food
- (24) 558 New Animal Drugs for Use in
Animal Feeds
- (25) 561 Tolerances for Pesticides in Animal
Feeds Administered by the
Environmental Protection Agency
- (26) 564 Definitions and Standards for Animal
Food
- (27) 570 Food Additives
- (28) 573 Food Additives Permitted in Feed and
Drinking Water of Animals
- (29) 582 Substances Generally Recognized as
Safe
- (30) 584 Food Substances Affirmed as
Generally Recognized as Safe in Feed
and Drinking Water of Animals
- (31) 589 Substances Prohibited from Use in
Animal Food or Feed

fifty cents (\$8.50).

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

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

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

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

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

(aa) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Food and Drug Administration. Copies of this material may be obtained at the FDA website at <http://www.fda.gov/cder/dmpq/freshair.htm>. A copy of this material may also be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

Authority G.S. 106-139; 106-267; 106-267.2.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Plant Conservation Board intends to amend the rules cited as 02 NCAC 48F .0301-.0302, .0304.

Proposed Effective Date: *March 1, 2004*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than November 18, 2003 to Marj Boyer, Secretary, NC Plant Conservation Board, 1060 Mail Service Center, Raleigh, NC 27699-1060.*

Reason for Proposed Action: *Proposed changes would add or remove certain plants in the various categories of protected*

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

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

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

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of eight dollars and

plants, as recommended by the Plant Conservation Scientific Committee based upon changes in the status of these plants.

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed rules by submitting a written statement of objection(s) to Marj Boyer, Secretary, NC Plant Conservation Board, 1060 Mail Service Center, Raleigh, NC 27699-1060.*

Written comments may be submitted to: *Marj Boyer, Secretary, NC Plant Conservation Board, 1060 Mail Service Center, Raleigh, NC 27699-1060, phone (919) 733-3610, ext. 250, fax (919) 733-1041, and email marj.boyer@ncmail.net.*

Comment period ends: *January 2, 2004*

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State**
- Local**
- Substantive (>\$3,000,000)**
- None**

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48F - PLANT CONSERVATION

**SECTION .0300 - ENDANGERED PLANT SPECIES LIST:
THREATENED PLANT SPECIES LIST: LIST OF
SPECIES OF SPECIAL CONCERN**

02 NCAC 48F .0301 ENDANGERED PLANT SPECIES LIST

The North Carolina Plant Conservation Board hereby establishes the following list of endangered plant species:

- (1) *Adiantum capillus-veneris* -- L.
Venus Hair Fern;
- (2) *Aeschynomene virginica* -- (L.) B.S.P.
Sensitive Jointvetch;
- (3) *Agrostis mertensii* -- Trin.
Arctic bentgrass;
- (4) *Amorpha georgiana* var. *georgiana* -- Wilbur
Georgia Indigo-bush;
- (5) *Arethusa bulbosa* -- L.
Bog Rose;

- (6) *Asplenium heteroresiliens* -- W.H. Wagner
Carolina Spleenwort;
- (7) *Asplenium monanthes* -- L.
Single-sorus Spleenwort;
- (8) *Aster parviceps* -- (Burgess) Mackenzie & Bush
Glade Aster;
- (9) *Bryocrumia andersonii* -- (Bartr.) Anders.
Gorge Moss;
- (10) *Buckleya distichophylla* -- (Nuttall) Torrey
Piratebush;
- (11) *Calamagrostis cainii* -- Hitchcock
Cain's Reed Grass;
- (12) *Calopogon multiflorus* -- Lindl.
Many-flowered Grass-Pink;
- (13) *Cardamine micranthera* -- Rollins
Small-anthered Bittercress;
- (14) *Carex aenea* -- Fernald
Fernald's Hay Sedge;
- (15) *Carex barrattii* -- Schweinitz and Torrey
Barratt's Sedge;
- (16) *Carex lutea* -- LeBlond
Golden Sedge;
- (17) *Carex oligosperma* -- Michx.
Few-seeded Sedge;
- (18) *Carex radfordii* -- Gaddy
Radford's sedge;
- (19) *Carex schweinitzii* -- Dewey ex Schweinitz
Schweinitz's Sedge;
- (20) *Carya myristiciformis* -- (Michaux f.) Nuttall
Nutmeg hickory;
- (21) *Cheilolejeunea evansii* -- (M. Taylor) Schust.
A liverwort;
- (22) *Chrysoma pauciflosculosa* -- (Michx.) Greene
Woody Goldenrod;
- (23) *Conioselinum chinense* -- (L.) B.S.P.
Hemlock Parsley;
- (24) *Cystopteris tennesseensis* -- Shaver
Tennessee Bladderfern;
- (25) *Dalibarda repens* -- L.
Robin Runaway;
- (26) *Delphinium exaltatum* -- Aiton
Tall Larkspur;
- (27) *Echinacea laevigata* -- (Boynton and Beadle)
Blake
Smooth Coneflower;
- (28) *Eriocaulon lineare* -- Small
Linear Pipewort;
- (29) *Filipendula rubra* -- (Hill) B.L. Robins.
Queen-of-the-Prairie;
- (30) *Gentianopsis crinita* -- (Froelich) Ma
Fringed Gentian;
- (31) *Geum radiatum* -- Michaux
Spreading Avens;
- (32) *Grammitis nimbata* -- (Jenm.) Proctor
Dwarf Polypody Fern;
- (33) *Gymnocarpium appalachianum* -- Pryer & Haufler
Appalachian Oak Fern;
- (34) *Helenium brevifolium* -- (Nutt.) Wood
Littleleaf Sneezeweed;

PROPOSED RULES

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| <p>(35) <i>Helenium vernale</i> -- Walt.
Spring Sneezeweed;</p> <p>(36) <i>Helianthus schweinitzii</i> -- T. & G.
Schweinitz's Sunflower;</p> <p>(37) <i>Hexastylis contracta</i> -- Blomquist
Mountain Heartleaf;</p> <p>(38) <i>Hierochloe odorata</i> -- (L.) Beauv.
Holy Grass;</p> <p>(39) <i>Houstonia purpurea</i> var. <i>montana</i> -- (Small)
Terrell
Mountain Bluet;</p> <p>(40) <i>Hudsonia montana</i> -- Nutt.
Mountain Golden Heather;</p> <p>(41) <i>Hydrastis canadensis</i> -- L.
Goldenseal;</p> <p>(42) <i>Hymenophyllum tayloriae</i> -- Farrar & Raine
Gorge filmy fern;</p> <p>(43) <i>Isotria medeoloides</i> -- (Pursh) Raf.
Small Whorled Pogonia;</p> <p>(44) <i>Juncus caesariensis</i> -- Coville
Rough Rush;</p> <p>(45) <i>Juncus trifidus</i> ssp. <i>carolinianus</i> -- Hamet Ahti
One-flowered Rush;</p> <p>(46) <i>Lilium pyrophilum</i> -- M. W. Skinner & Sorrie
Sandhills bog lily;</p> <p>(47) <i>Lindera melissaefolia</i> -- (Walter) Blume
Southern Spicebush;</p> <p>(48) <i>Lophiola aurea</i> -- Ker-Gawl.
Golden Crest;</p> <p>(49) <i>Lysimachia asperulaefolia</i> -- Poiret
Rough-leaf Loosestrife;</p> <p>(50) <i>Lysimachia fraseri</i> -- Duby
Fraser's Loosestrife;</p> <p>(51) <i>Minuartia godfreyi</i> -- (Shinners) McNeill
Godfrey's Sandwort;</p> <p>(52) <i>Minuartia uniflora</i> -- (Walter) Mattfield
Single-flowered Sandwort;</p> <p>(53) <i>Muhlenbergia torreyana</i> -- (Schultes)
Hitchcock
Torrey's Muhly;</p> <p>(54) <i>Myrica gale</i> -- L.
Sweet Gale;</p> <p>(55) <i>Narthecium americanum</i> -- Ker
Bog Asphodel;</p> <p>(56) <i>Orbexilum macrophyllum</i> -- (Rowlee ex
Small) Rydberg
Bigleaf Scurfpea;</p> <p>(57) <i>Orthotrichum keeverae</i> -- Crum & Anders.
Keever's Bristle Moss;</p> <p>(58) <i>Oxypolis canbyi</i> -- (Coul. & Rose) Fern.
Canby's Cowbane;</p> <p>(59) <i>Panicum hirstii</i> -- Swallen
Hirst's Panic Grass;</p> <p>(60) <i>Parnassia caroliniana</i> -- Michaux
Carolina Grass-of-Parnassus;</p> <p>(61) <i>Pellaea wrightiana</i> -- Hooker
Wright's Cliff-brake Fern;</p> | <p>(62) <i>Plantago cordata</i> -- Lam.
Heart-leaf Plantain;</p> <p>(63) <i>Plantago sparsiflora</i> -- Michaux
Pineland Plantain;</p> <p>(64) <i>Platanthera integrilabia</i> -- (Correll) Leur
White Fringeless Orchid;</p> <p>(65) <i>Poa paludigena</i> -- Fernald & Wiegand
Bog Bluegrass;</p> <p>(66) <i>Pteroglossaspis ecristata</i> -- (Fernald) Rolfe
Eulophia;</p> <p>(67) <i>Ptilimnium nodosum</i> -- (Rose) Mathias
Harperella;</p> <p>(68) <i>Pyxidantha barbulate</i> var. <i>brevifolia</i> --
(Wells) Ahles
Wells' Pyxie-moss;</p> <p>(69) <i>Rhus michauxii</i> -- Sargent
Michaux's Sumac;</p> <p>(70) <i>Rhynchospora crinipes</i> -- Gale
Mosquito Beak Sedge;</p> <p>(71) <i>Rhynchospora macra</i> -- (C.B. Clarke) Small
Large Beak Sedge;</p> <p>(72) <i>Rhynchospora thornei</i> -- Kral
Thorne's Beaksedge;</p> <p>(73) <i>Rudbeckia heliopsidis</i> -- Torr. & Gray
Sun-facing coneflower;</p> <p>(74) <i>Sagittaria fasciculata</i> -- E.O. Beal
Bunched Arrowhead;</p> <p>(75) <i>Sarracenia jonesii</i> -- Wherry
Mountain Sweet Pitcher Plant;</p> <p>(76) <i>Sarracenia oreophila</i> -- (Kearney) Wherry
Green Pitcher Plant;</p> <p>(77) <i>Schwalbea americana</i> -- L.
Chaffseed;</p> <p>(78) <i>Sedum pusillum</i> -- Michaux
Puck's Orpine;</p> <p>(79) <i>Sedum rosea</i> -- (L.) Scop.
Roseroot;</p> <p>(80) <i>Senecio schweinitzianus</i> -- Nuttall
Schweinitz's Groundsel;</p> <p>(81) <i>Shortia galacifolia</i> -- T. & G.
Oconee Bells;</p> <p>(82) <i>Sisyrinchium dichotomum</i> -- Bicknell
Reflexed Blue-eyed Grass;</p> <p>(83) <i>Solidago plumosa</i> -- Small
Yadkin River Goldenrod;</p> <p>(84) <i>Solidago ptarmicoides</i> -- (Nees) Boivin
Prairie Goldenrod;</p> <p>(85) <i>Solidago spithamaea</i> -- M.A. Curtis
Blue Ridge Goldenrod;</p> <p>(86) <i>Solidago villosicarpa</i> -- LeBlond
Coastal goldenrod;</p> <p>(87) <i>Sphagnum fuscum</i> -- (Schimp.) Klinggr.
Brown Peatmoss;</p> <p>(88) <i>Sphenolobopsis pearsoni</i> -- (Sprengel)
Schuster & Kitagawa
A liverwort;</p> <p>(89) <i>Spiraea virginiana</i> -- Britton
Virginia Spiraea;</p> |
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| <p>(90) Sporobolus heterolepis -- Gray
Prairie Dropseed;</p> <p>(91) Stylisma pickeringii var. pickeringii -- (Torrey ex M.A. Curtis) Gray
Pickering's Morning Glory;</p> <p>(92) Talinum mengesii -- W. Wolf
Large-flowered fameflower;</p> <p>(93) Thalictrum cooleyi -- Ahles
Cooley's Meadowrue;</p> <p>(94) Tortula ammoniana -- Crum & Anders.
Ammon's Tortula;</p> <p>(95) Trillium pusillum -- Michaux
Carolina Least Trillium;</p> <p>(96) Trisetum spicatum var. molle -- (Michaux) Beal
Soft Trisetum.</p> | <p>(18) Dwarf-flowered Heartleaf;
Ilex collina -- Alexander
Long-stalked Holly;</p> <p>(19) Isoetes piedmontana -- (Pfeiffer) Reed
Piedmont Quillwort;</p> <p>(20) Liatris helleri -- (Porter) Porter
Heller's Blazing Star;</p> <p>(21) Lilaeopsis carolinensis -- Coult. & Rose
Carolina Lilaeopsis;</p> <p>(22) Lilium grayi -- Watson
Gray's Lily;</p> <p>(23) Lindera subcoriacea -- Wofford
Bog spicebush;</p> <p>(24) Lobelia boykinii -- T. & G.
Boykin's lobelia;</p> <p>(25) Macbridea caroliniana -- (Walt.) Blake
Carolina Bogmint;</p> <p>(26) Menyanthes trifoliata -- L.
Buckbean;</p> <p>(27) Myriophyllum laxum -- Schuttlew. ex Chapman
Loose Watermilfoil;</p> <p>(28) Parnassia grandifolia -- DC.
Large-leaved Grass-of-Parnassus;</p> <p>(29) Platanthera integra -- (Nuttall) Gray ex Beck
Yellow Fringeless Orchid;</p> <p>(30) Platanthera nivea -- (Nutt.) Luer
Snowy Orchid;</p> <p>(31) Portulaca smallii -- P. Wilson
Small's Portulaca;</p> <p>(32) Quercus ilicifolia -- Wangenheim
Bear oak;</p> <p>(33) Rhexia aristosa -- Britton
Awned Meadow-beauty;</p> <p>(34) Ruellia humilis -- Nutt.
Low Wild-petunia;</p> <p>(35) Sabatia kennedyana -- Fern.
Plymouth Gentian;</p> <p>(36) Schisandra glabra -- (Brickel) Rehder
Magnolia-vine;</p> <p>(37) Schlotheimia lancifolia -- Bartr.
Highlands Moss;</p> <p>(38) Senecio millefolium -- T. & G.
Divided-leaf Ragwort;</p> <p>(39) Solidago verna -- M.A. Curtis
Spring-flowering Goldenrod;</p> <p>(40) Spiranthes longilabris -- Lindl.
Giant Spiral Orchid;</p> <p>(41) Sporobolus teretifolius -- Harper
Wireleaf Dropseed;</p> <p>(42) Thelypteris simulata -- (Davenp.) Nieuwl.
Bog Fern;</p> <p>(43) Trichomanes boschianum -- Sturm ex Bosch
Appalachian Filmy-fern;</p> <p>(44) Trichomanes petersii -- A. Gray
Dwarf Filmy-fern;</p> <p>(45) Trillium discolor -- Wray ex Hook.
Mottled Trillium;</p> <p>(46) Utricularia olivacea -- Wright ex Grisebach</p> |
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Authority G.S. 106-202.15.

02 NCAC 48F .0302 THREATENED PLANT SPECIES LIST

The North Carolina Plant Conservation Board hereby establishes the following list of threatened plant species:

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|---|--|
| <p>(1) Amaranthus pumilus -- Raf.
Seabeach Amaranth;</p> <p>(2) Amorpha georgiana var. confusa -- Wilbur
Savanna Indigo-bush;</p> <p>(3) Aster georgianus -- Alexander
Georgia Aster;</p> <p>(4) Astragalus michauxii -- (Kuntze) F.J. Herm.
Sandhills Milkvetch;</p> <p>(5) Baptisia minor -- Lehmann
Prairie Blue Indigo;</p> <p>(6) Cacalia rugelia -- (Shuttl. ex Chapm) Barkley & Cronq.
Rugel's Ragwort;</p> <p>(7) Camassia scilloides -- (Raf.) Cory
Wild Hyacinth;</p> <p>(8) Carex conoidea -- Willd.
Cone-shaped Sedge;</p> <p>(9) Carex exilis -- Dewey
Coastal Sedge;</p> <p>(10) Eleocharis halophila -- Fern. & Brack.
Salt Spikerush;</p> <p>(11) Eupatorium resinum -- Torr. ex DC.
Resinous Boneset;</p> <p>(12) Fimbristylis perpusilla -- Harper ex Small & Britton
Harper's Fringe-rush;</p> <p>(13) Geum geniculatum -- Michaux
Bent Avens;</p> <p>(14) Glyceria nubigena -- W.A. Anderson
Smoky Mountain Mannagrass;</p> <p>(15) Gymnoderma lineare -- (Evans) Yoshimura & Sharp
Gnome Finger Lichen;</p> <p>(16) Helonias bullata -- L.
Swamp Pink;</p> <p>(17) Hexastylis naniflora -- Blomquist</p> | <p>(27) Myriophyllum laxum -- Schuttlew. ex Chapman
Loose Watermilfoil;</p> <p>(28) Parnassia grandifolia -- DC.
Large-leaved Grass-of-Parnassus;</p> <p>(29) Platanthera integra -- (Nuttall) Gray ex Beck
Yellow Fringeless Orchid;</p> <p>(30) Platanthera nivea -- (Nutt.) Luer
Snowy Orchid;</p> <p>(31) Portulaca smallii -- P. Wilson
Small's Portulaca;</p> <p>(32) Quercus ilicifolia -- Wangenheim
Bear oak;</p> <p>(33) Rhexia aristosa -- Britton
Awned Meadow-beauty;</p> <p>(34) Ruellia humilis -- Nutt.
Low Wild-petunia;</p> <p>(35) Sabatia kennedyana -- Fern.
Plymouth Gentian;</p> <p>(36) Schisandra glabra -- (Brickel) Rehder
Magnolia-vine;</p> <p>(37) Schlotheimia lancifolia -- Bartr.
Highlands Moss;</p> <p>(38) Senecio millefolium -- T. & G.
Divided-leaf Ragwort;</p> <p>(39) Solidago verna -- M.A. Curtis
Spring-flowering Goldenrod;</p> <p>(40) Spiranthes longilabris -- Lindl.
Giant Spiral Orchid;</p> <p>(41) Sporobolus teretifolius -- Harper
Wireleaf Dropseed;</p> <p>(42) Thelypteris simulata -- (Davenp.) Nieuwl.
Bog Fern;</p> <p>(43) Trichomanes boschianum -- Sturm ex Bosch
Appalachian Filmy-fern;</p> <p>(44) Trichomanes petersii -- A. Gray
Dwarf Filmy-fern;</p> <p>(45) Trillium discolor -- Wray ex Hook.
Mottled Trillium;</p> <p>(46) Utricularia olivacea -- Wright ex Grisebach</p> |
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Dwarf Bladderwort.

(2) Panax quinquefolius -- L.
Ginseng.

Authority G.S. 106-202.15.

Authority G.S. 106-202.15.

02 NCAC 48F .0304 PLANT SPECIES OF SPECIAL CONCERN

(a) Special Concern Endangered Plant Species are those species that appear on both the Endangered Species List and on the Special Concern Species List and which can be offered for propagation to propagators under permit.

- (1) Cystopteris tennesseensis -- Shaver
Tennessee Bladderfern;
- (2) Delphinium exaltatum -- Aiton
Tall Larkspur;
- (3) Echinacea laevigata -- (Boynton & Beadle)
Blake
Smooth Coneflower;
- (4) Gentianopsis crinita -- (Froehlich) Ma
Fringed Gentian;
- (5) Geum radiatum -- Michaux
Spreading Avens;
- (6) Hydrastis canadensis -- L.
Goldenseal, Orangeroot;
- (7) Kalmia cuneata -- Michaux
White Wicky;
- (8) Lilium pyrophilum -- Skinner & Sorrie
Sandhills bog lily;
- (9) Pellaea wrightiana -- Hooker
Wright's Cliff-brake Fern;
- (10) Rhus michauxii -- Sargent
Michaux's Sumac;
- (11) Sarracenia jonesii -- Wherry
Mountain Sweet Pitcher Plant;
- (12) Sarracenia oreophila -- (Kearney) Wherry
Green Pitcher Plant;
- (13) Shortia galacifolia -- T. & G.
Oconee Bells.

(b) Special Concern Threatened Plant Species are those species that appear on both the Threatened Species List and on the Special Concern Species List and which can be offered for propagation to propagators under permit.

- (1) Eupatorium resinosum -- Torr. ex DC.
Resinous Boneset;
- (2) Helonias bullata -- L.
Swamp Pink;
- (3) Liatris helleri -- (Porter) Porter
Heller's Blazing Star;
- (4) Lilium grayi -- Watson
Gray's Lily;
- (5) Sabatia kennedyana -- Fern.
Plymouth Gentian;
- (6) Schisandra glabra -- (Brickel) Rehder
Magnolia Vine.

(c) Special Concern Not Endangered or Threatened Plant Species are those species that appear on the Special Concern Species List but do not appear on the Endangered Species List or the Threatened Species List and which it shall be unlawful to distribute, sell or offer for sale except as otherwise provided in the rules.

- (1) Dionaea muscipula -- Ellis
Venus Flytrap;

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Environment and Natural Resources intends to adopt the rule cited as 15A NCAC 01R .0101.

Proposed Effective Date: March 1, 2004

Public Hearing:

Date: November 19, 2003

Time: 10:00 a.m.

Location: Conference Room 3, 14th floor, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: Pursuant to G.S. 143B-289.4(b) and 143B-289.44, the Department of Environment and Natural Resources has authority to establish and set admission fees for the three North Carolina Aquariums. General appropriations to the Aquariums have been the subject of reductions in 2002 and 2003, and it has been anticipated that the reductions would be covered by admission fee increase. The existing admission fee schedule does not produce sufficient revenue in order to maintain the Admission Fund so that the Aquariums can rely upon these revenues for operational costs. Admission fees at comparable in-State public attractions and other aquariums are significantly higher. The increased admission fee schedule is imperative to provide funds that will allow the North Carolina Aquariums to meet their mission and provide a reasonable level of service and education to visitors.

Procedure by which a person can object to the agency on a proposed rule: Any person objecting to the adoption of this proposed permanent rule should submit their objections to the North Carolina Aquariums, 417 N. Blount St., Raleigh, NC 27601-1009.

Written comments may be submitted to: David R. Griffin, North Carolina Aquariums, 417 N. Blount St., Raleigh, NC 27601-1009, phone (919) 733-2290, fax (919) 733-4271, and email david.griffin@ncmail.net.

Comment period ends: January 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a

PROPOSED RULES

rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (>\$3,000,000)
- None

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01R - NORTH CAROLINA AQUARIUMS

SECTION .0100 – FEES

15A NCAC 01R .0101 FEE SCHEDULE

(a) The following schedule of fees shall be applicable to govern admission to the North Carolina Aquariums:

- (1) Roanoke Island:
 - Adults, 18 and over \$7.00
 - Senior Citizens \$6.00
 - Active Military \$6.00
 - Ages 6-17 \$5.00
- (2) Fort Fisher:
 - Adults, 18 and over \$7.00
 - Senior Citizens \$6.00
 - Active Military \$6.00
 - Ages 6-17 \$5.00
- (3) Pine Knoll Shores:
 - Adults, 18 and over \$4.00
 - Senior Citizens \$3.00
 - Active Military \$3.00
 - Ages 6-17 \$2.00

(b) Free admission is offered to the following groups:

- (1) Aquarium Society Members;
- (2) North Carolina School groups;
- (3) American Zoo and Aquarium Association reciprocals; and
- (4) Children under the age of six.

Free or modified admissions may also be offered on a case-by-case basis on state holidays, and for group events at the North Carolina Aquariums.

Authority G.S. 143B-289.41(b); 143B-289.44.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend the rule cited as 19A NCAC 02D .0532.

Proposed Effective Date: March 1, 2004

Public Hearing:

Date: November 18, 2003

- (1) Cedar Island-Ocracoke and Swan Quarter-Ocracoke
 - (a) pedestrian \$ 1.00

Time: 7:00 p.m.

Location: Historic Currituck County Courthouse, 153 Courthouse Rd., Currituck, NC

Reason for Proposed Action: House Bill 397, Session Law 2003-284, Section 29.20, effective July 1, 2003, authorized the Department of Transportation to establish a new ferry service on or before May 1, 2004 from the Currituck terminal of the Currituck-Knotts Island ferry to Corolla. This Rule is proposed for amendment to establish a new ferry route and set conditions under which the route will operate.

Procedure by which a person can object to the agency on a proposed rule: A person can object to this proposed agency rule in writing by mailing the objection to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 or by email at elee@dot.state.nc.us.

Written comments may be submitted to: Emily B. Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501, phone (919) 733-2520, fax (919) 733-9150, and email elee@dot.state.nc.us.

Comment period ends: January 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (>\$3,000,000)
- None

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02D - HIGHWAY OPERATIONS

SECTION .0500 - FERRY OPERATIONS

19A NCAC 02D .0532 TOLL OPERATIONS

The Cedar Island-Ocracoke, Currituck-Corolla, Swan Quarter-Ocracoke and Southport-Ft. Fisher ferry operations are toll operations. Fares and rates applicable to each operation are as listed in this Rule:

PROPOSED RULES

	(b)	bicycle and rider	\$ 3.00
	(c)	motorcycle and rider	\$10.00
	(d)	single vehicle or combination 20' or less in length (minimum fare for licensed vehicle)	\$15.00
	(e)	vehicle or combination over 20' up to and including 40'	\$30.00
	(f)	vehicle or combination over 40' to 65' (maximum length)	\$45.00
	(g)	vehicle or combination over 65'	Special Permit @ \$1.00 Per Foot
(2)		Currituck-Corolla (pedestrian only) (no toll charge for Currituck County school children and staff)	\$2.00
(3)		Southport-Ft. Fisher	
	(a)	pedestrian	\$ 1.00
	(b)	bicycle and rider	\$ 2.00
	(c)	motorcycle and rider	\$ 3.00
	(d)	single vehicle or combination 20' or less in length (minimum fare for licensed vehicle)	\$ 5.00
	(e)	vehicle or combination over 20' up to and including 40'	\$10.00
	(f)	vehicle or combination over 40' to 65'	\$15.00
	(g)	vehicle or combination over 65'	Special Permit @ \$1.00 Per Foot
(4)		Commuter Passes are valid for one year from date of purchases. Passes are available to anyone.	
	Type	System-Wide Pass	Site Specific Pass
	Vehicles up to 20'	\$150.00	\$100.00
	Vehicles over 20' to 40'	\$200.00	\$125.00
	Vehicles over 40' to 65'	\$250.00	\$150.00

Authority G.S. 136-82; 143B-10(j).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 34 - BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Funeral Service intends to amend the rule cited as 21 NCAC 34A .0201.

Proposed Effective Date: March 1, 2004

Public Hearing:

Date: December 10, 2003

Time: 9:00 a.m.

Location: NC Board of Funeral Service, 2321 Crabtree Blvd., Suite 100, Raleigh, NC

Reason for Proposed Action: *To enact fees for Crematory Manager and Transportation Permits and to increase fees for inactive licensees, cremations and other preneed fees to meet the increased financial demands of operations of the Board.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections can be mailed to Mark Henderson, 2321 Crabtree Blvd., Suite 100, Raleigh, NC 27604, faxed to Mark Henderson at 919-733-8271, or emailed to Mark Henderson at mhenderson@ncbfs.org. A person may also object by attending the public hearing and addressing the Board.*

Written comments may be submitted to: *Mark Henderson, 2321 Crabtree Blvd., Suite 100, Raleigh, NC 27604, fax (919) 733-8271 and email mhenderson@ncbfs.org.*

Comment period ends: January 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative

Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (>\$3,000,000)
- None

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0200 - FEES AND OTHER PAYMENTS

21 NCAC 34A .0201 FEES AND OTHER PAYMENTS

(a) Fees for funeral service shall be as follows:

Establishment permit

PROPOSED RULES

Application	\$250.00
Annual renewal	\$150.00
Late renewal fee	\$100.00
Establishment and embalming facility reinspection fee	\$100.00
Courtesy card	
Application	\$ 75.00
Annual renewal	\$ 50.00
Out-of-state licensee	
Application	\$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$ 40.00
Funeral Director	\$ 40.00
Total fee, embalmer and funeral director, when both are held by same person	\$ 60.00
Funeral service	\$ 60.00
Inactive status	\$ 30.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Voluntary change in supervisor	\$ 50.00
Annual renewal	\$ 35.00
Late renewal	\$ 25.00
Duplicate License certificate	\$ 25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00
Late renewal	\$ 75.00
(b) Fees for crematories shall be as follows:	
License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal fee	\$ 75.00
Crematory reinspection fee	\$100.00
Per-cremation fee	\$ 10.00
Late filing or payment fee for each cremation	\$ 10.00
Late filing fee for cremation report, per month	\$ 75.00
Crematory Manager Permit	
Application	\$150.00
Annual renewal	\$ 40.00
(c) Fees for preneed funeral contract regulation shall be as follows:	
Preneed funeral establishment license	
Application	\$150.00
Annual renewal	\$150.00
Late renewal fee	\$100.00
Reinspection fee	\$100.00
Preneed sales license	
Application	\$ 20.00
Annual renewal	\$ 20.00
Late renewal fee	\$ 25.00
Preneed licensee reinspection fee	\$100.00
Preneed contract filings	
Filing fee for each contract	\$ 20.00
Late filing or payment fee for each contract	\$ 25.00
Late filing fee for each certificate of performance	\$ 25.00
Late filing fee for annual report	\$150.00
(d) Fees for Transportation Permits	
Application	\$125.00
Annual renewal	\$ 40.00
Late fee	\$ 50.00

Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.52; 90-210.67(b),(c),(d),(d1); 90-210.68(a).

CHAPTER 61 - THE NORTH CAROLINA RESPIRATORY CARE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Respiratory Care Board intends to adopt the rules cited as 21 NCAC 61 .0205, .0309 - .0310, and amend the rules cited as 21 NCAC 61 .0201, .0204, .0301, .0303 - .0304, .0401.

Proposed Effective Date: March 1, 2004

Public Hearing:

Date: November 18, 2003

Time: 1:00 p.m.

Location: NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC

Reason for Proposed Action:

21 NCAC 61 .0201 – To clarify minimum educational and skill requirements, based on amendments to G.S. 90-653(a) enacted in House Bill 1257.

21 NCAC 61 .0204 – To adopt a standard fee for verification of license status, as authorized under amendments to G.S. 90-660(b) enacted in House Bill 1257.

21 NCAC 61 .0205 – To adopt a Rule to establish guidance for the Board's newly authorized statutory authority to require applicants to provide background investigation materials, enacted in House Bill 1257.

21 NCAC 61 .0301 – To delete description of licensing phase – in dates that are no longer applicable and to provide additional clarification of license display requirements.

21 NCAC 61 .0303 – To clarify the requirements for direct supervision of provisional licensees.

21 NCAC 61 .0304 – To clarify the statutory citation in light of amendments to G.S. 90-654 enacted by House Bill 1257.

21 NCAC 61 .0309 – To adopt a rule that establishes a schedule of Civil Penalties, pursuant to the Board's newly authorized statutory authority enacted in House Bill 1257 regarding Civil Penalties.

21 NCAC 61 .0310 – To adopt a rule that establishes procedures for the assessment of Civil Penalties, pursuant to the Board's newly authorized statutory authority enacted in House Bill 1257 regarding Civil Penalties.

21 NCAC 61 .0401 - To clarify continuing education requirements and to adopt a schedule of fees for the review and approval of certain continuing education programs, as authorized in an amendment to G.S. 90-660(b) enacted in House Bill 1257.

Procedure by which a person can object to the agency on a proposed rule: A person may object to the Board on a proposed rule by sending a written objection addressed to Floyd Boyer, RRT RCP Executive Director, NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. (919) 878-5595 (Phone), (919) 878-5565 (Fax), fboyer@ncrcb.org (e-mail).

Written comments may be submitted to: *Written comments should be submitted to Floyd Boyer, RRT, RCP, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. Phone (919) 878-5595, fax (919) 878-5565, email: fboyer@ncrcb.org.*

Comment period ends: January 2, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State** 21 NCAC 61 .0401
- Local** 21 NCAC 61 .0401
- Substantive** (>\$3,000,000)
- None** 21 NCAC 61 .0201, .0204 - .0205, .0301, .0303 - .0304, .0309 - .0310

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 61 .0201 APPLICATION PROCESS

Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one recent head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the proper fees, as required by G.S. 90-653;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs or the Canadian Council on Accreditation for Respiratory Therapy Education;
- (4) evidence, verified by oath, that the applicant has, at a minimum, successfully completed the requirements for certification and will maintain certification in Basic Life Support which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American

- (5) Heart Association for ~~Basic Cardiac Life Support~~, the American Red Cross or the American Safety and Health Institute; and satisfactory evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination administered by it.

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

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

(f) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedure established in G.S. 150B, Article 3A.

Authority G.S. 90-652(1) and (2); G.S. 90-653(a).

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of twenty-five dollars (\$25.00);
- (2) For issuance of an active license, a fee of one hundred dollars (\$100.00);
- (3) For the renewal of an active license, a fee of fifty dollars (\$50.00);
- (4) For the late renewal of any license, an additional late fee of fifty dollars (\$50.00);
- (5) For a license with a provisional or temporary endorsement, a fee of thirty-five dollars (\$35.00);
- (6) For official verification of license status, a fee of ten dollars (\$10.00); and
- (7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Respiratory Care Board. However, personal checks may be accepted for payment of renewal fees.

Authority G.S. 90-652(2);(9); 90-660.

21 NCAC 61 .0205 BACKGROUND INVESTIGATION

(a) Every applicant for licensure shall provide, at her or his expense, a criminal history record check obtained within 60 days after the date the applicant submits all the prerequisites for licensure. This record check shall be made from information the applicant can access from national files. In all instances the applicant must make full and accurate disclosure of any felony convictions, any misdemeanor convictions (except for minor traffic violations), convictions of any crime directly related to the practice of respiratory care and/or any disciplinary action pending or ever been taken against any health care provider license/certificate the applicant has or has had.

(b) The applicant shall provide any additional information regarding any conviction as requested by the Board.

(c) Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to licensure pursuant to G.S. 90-659.

(d) The Board shall determine if any conviction is related to the duties and responsibilities of a respiratory care practitioner. The Board shall consider the following factors:

- (1) The nature and seriousness of the crime;

Authority G.S. 90-652 (1).

SECTION .0300 - LICENSING

21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE

(a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in these rules, or as noted on the face of the license.

(b) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will not be reissued. A license card showing the expiration date must be filed or on display at the licensee's principal place of business so as to be available for inspection. Each licensee also shall keep a copy of the license wallet card available for inspection to anyone on request in the course of delivering services.

(c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee shall wear a badge or nameplate which displays, in easily visible type, the licensee's name followed by a comma and the designation "RCP", which is an abbreviation for respiratory care practitioner. Provisional license holders shall wear a badge or nameplate which displays, in easily visible type, the licensee's name and the designation "RCP-Provisional". RCP students shall wear a badge or nameplate which displays, in easily visible type, the student's name, the designation "RCP Student" and the name of the school the student is attending.

Authority G.S. 90-640; 90-652(2);(4); 90-658(b).

21 NCAC 61 .0303 LICENSE WITH PROVISIONAL ENDORSEMENT

An applicant for a provisional license must have completed the educational requirements set out in 21 NCAC 61 .0201 and must have made application to take the certification exam administered by the NBRC and must have filed his application with the Board in accordance with G.S. 90-656 and these Rules. The provisional license authorizes the practice of respiratory care under the direct supervision of a licensed respiratory care practitioner. Direct supervision shall mean that the supervising licensed respiratory care practitioner will be in the same facility and readily available for supervision of and consultation with the

provisional licensee at all times the provisional licensee is engaging in the practice of respiratory care. The provisional license shall be valid for a period not to exceed 12 months from date of issuance or until revoked by the Board, whichever occurs first.

Authority G.S 90-652(2),(4); 90-656.

21 NCAC 61 .0304 LICENSE WITH TEMPORARY ENDORSEMENT

The Board may grant a temporary license pursuant to G.S. 90-654.

Authority G.S 90-652(1),(2),(4); 90-654.

21 NCAC 61 .0309 SCHEDULE OF CIVIL PENALTIES

The rules in this Subchapter establish the schedule of civil penalties set out in G.S. 90-666(a). The amounts stated are the presumptive amounts which may be modified in the discretion of the Board based upon factors set forth in G.S. 90-666(b).

- (1) The presumptive civil penalty for the following violations is: 1st offense fifty dollars (\$50.00) (Warning), 2nd offense one hundred dollars (\$100.00), 3rd offense two hundred and fifty dollars (\$250.00). Those violations that are first offense correctable are identified with the word "warning" appended to them. If the offense is not corrected within the 30 day time allotted, the presumptive civil penalty in parenthesis shall apply.
 - (a) Failure to display an individual license upon request.
 - (b) Failure to notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.
 - (c) Failure to maintain, at a minimum, certification in Basic Life Support which includes Adult, Child and Infant CPR, the Heimlich Maneuver, and AED use.
- (2) The presumptive civil penalty for the following violations is: 1st offense one hundred dollars (\$100.00), 2nd offense two hundred and fifty dollars (\$250.00), 3rd offense five hundred dollars (\$500.00);
 - (a) Knowingly perpetuating an error of the Board.
 - (b) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he/she is not competent to perform or delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason

to know, that such person is not qualified by training, experience, or licensure to perform.

- (c) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
- (d) Using the title "Respiratory Care Practitioner", the letters "RCP, RTT", "RT" or any facsimile or combination in any words, letters, abbreviations, or insignia or implying orally or in writing or indicating in any way that the person is a Respiratory Care Practitioner unless licensed by the Board.
- (3) The presumptive civil penalty for the following violations is: 1st offense two hundred and fifty dollars (\$250.00), 2nd offense five hundred dollars (\$500.00), 3rd offense one thousand dollars (\$1000.00);
 - (a) Practicing respiratory care without a license.
 - (b) Allowing unlicensed individuals under the person's supervision to practice respiratory care. Employ or solicit for employment unlicensed persons to practice respiratory care.
 - (c) Altering a license, permit or authorization issued by the Board.
 - (d) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation.
 - (e) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
 - (f) Performing services which the practitioner is not licensed to perform or performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
 - (g) Failing to properly make the disclosures required by 21 NCAC 61.0308.
 - (h) Engaging in unprofessional conduct related to the delivery of respiratory care, which includes, but is not limited to, engaging in any act or practice that is hazardous to public health, safety or welfare.
 - (i) Committing an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
 - (j) Discontinuing professional services unless services have been completed, the client requests the

discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.

- (k) Circulating false, misleading, or deceptive advertising.
 - (l) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner.
 - (m) Filing a false continuing education documentation report or record.
 - (n) Violating a lawful order of the board or aiding, abetting or assisting any person in a violation of a lawful order of the Board.
- (4) The presumptive civil penalty for the following violations is: 1st offense one thousand dollars (\$1000.00), 2nd offense one thousand dollars (\$1000.00), 3rd offense one thousand dollars (\$1000.00);
- (a) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.
 - (b) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
 - (c) Paying or receiving any improper commission or bonus, or any kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.
 - (d) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation or undue influence.
 - (e) Exercising influence within a respiratory care relationship for the

purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.

Authority G.S. 90-666.

21 NCAC 61 .0310 CIVIL PENALTY PROCEDURES

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

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

(c) Contested Case. Persons to whom a notice of violation or a citation is issued and a civil penalty assessed, may contest the civil penalty by filing written notice with the Board within 60 days of the receipt of the notice of violation or citation. The Board shall institute a contested case by sending a notice of hearing pursuant to G.S. 150B, Article 3A. The Board shall conduct a contested case hearing pursuant to G.S. 150B, Article 3A. The licensee's filing written notice with the Board shall stay the civil penalty until the Board renders a final agency decision in the contested case.

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

(e) Cost of disciplinary action(s). The Board shall assess the costs of disciplinary actions against a person found to be in violation of the Respiratory Care Practice Act or rules adopted by the Board.

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

Authority G.S. 90-666.

SECTION .0400 - CONTINUING EDUCATION REQUIREMENTS FOR LICENSE HOLDERS

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

PROPOSED RULES

(a) Each year on or before the expiration date of the respiratory care practitioners license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or (2) of this Paragraph:

- (1) Provide proof of completion of a minimum of 10 hours each year of Category I Continuing Education (CE) acceptable to the Board. "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:
 - (A) Lecture – a discourse given for instruction before an audience or through teleconference.
 - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution.
 - (C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest.
 - (D) Seminar – a directed advanced study or discussion in a specific field of interest.
 - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.
 - (F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.
- (2) Retake the certified respiratory therapist (CRT) examination with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the ~~Perinatal/Pediatric~~ Neonatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.

(b) Licensees will be required to list on a form provided by the Board, the Category I CE courses completed that meet the 10-hour requirement, as well as specified subject matter of the courses completed. Space will be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements, a notation of the examination taken with the date taken is to be placed on the form.

(c) CE course work must be completed through one or more of the providers of CE as identified on a list of providers to be maintained by the Board.

(d) All CE course work must be directly related to the practice of respiratory care or to expanding the scope of practice for respiratory care practitioners.

(e) CE courses approved by the American Association for Respiratory Care and/or the Accreditation Council for Continuing Medical Education (ACCME) are approved for Respiratory Care Practitioners to receive continuing education credit and are not required to make application to the Board or pay a fee.

(f) The following Certification Programs are approved for Respiratory Care Practitioners to receive continuing education credit. The sponsor is not required to make application to the Board or pay a fee. Certification or recertification as an instructor in ACLS, PALS, and/or NRP will receive the same CE credit as listed.

- (1) Advanced Cardiac Life Support (ACLS) (10 hours for Initial certification and 5 hours for re-certification)
- (2) Pediatric Advanced Life Support (PALS) (10 hours for Initial certification and 5 hours for re-certification)
- (3) Neonatal Resuscitation Protocol (NRP) (8 hours for Initial certification and 4 hours for re-certification)
- (4) Basic Life Support (BLS) Instructor (8 hours for Initial certification and 4 hours for re-certification)

(g) The Board shall charge the following fees to all other providers of CE for approval of continuing education programs:

- (1) Programs approved for 1 to 2 hours of CE: Non Profit Organizations and Government Agencies, ten dollars (\$ 10.00); For Profit Organizations, twenty dollars (\$ 20.00).
- (2) Programs approved for 3 to 5 hours of CE: Non Profit Organizations and Government Agencies, twenty dollars (\$ 20.00); For Profit Organizations, forty dollars (\$ 40.00).
- (3) Programs approved for 6 to 10 hours of CE: Non Profit Organizations and Government Agencies, forty dollars (\$ 40.00); For Profit Organizations, eighty dollars (\$ 80.00).
- (4) Programs approved for 11 or more hours of CE: Non Profit Organizations and Government Agencies, eighty dollars (\$ 80.00); For Profit Organizations, one hundred and fifty dollars (\$150.00).

~~(d)~~ (h) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.

~~(e)~~ (i) The Board may consider requests for extensions of the continuing education requirements due to personal emergencies and other extenuating circumstances on a case by case basis.

Authority G.S. 90-652(2)(13); 90-660(b)(9).

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Social Services Commission*

Rule Citation: *10A NCAC 71V .0301-.0306*

Effective Date: *October 9, 2003*

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

Reason for Action: *An abbreviated notice was issued on September 26, 2003, to the persons and organizations on the Social Services Commission mailing list maintained pursuant to G.S. 150-21.2(d), 100 county departments of social services and the Social Services Commission website. Adherence of the normal time period for notice and hearing would have significantly delayed the county departments of social services' ability to immediately address the needs of families in counties impacted by Hurricane Isabel and declared disaster areas by FEMA. The county departments of social services and other non-profit agencies have been inundated with request for assistance. It is important to mention that many families applying for assistance do not have sufficient insurance to cover their loss or the required deductible. Families need immediate assistance to make their homes safe to inhabit, they need shelter, screen doors and windows, and they need to replace air conditioning and heating units that may have been damaged by a tree or other debris. In addition to losing their homes and having their homes severely damaged, many lost their jobs due to damage their employers sustained by the hurricane. To ask a family to wait the normal required notice and hearing period would put their health and safety at risk. County departments of social services administer the Crisis Intervention Program that could provide some assistance for eligible families in situations such as this. However, there is a \$300 annual limit on the amount of assistance a family may receive. If a family has received \$300 earlier in the year to help with a heating fuel bill for example, that family is currently not eligible to receive assistance with a disaster related expense. Therefore, these emergency rules are needed in order for the county department of social services to authorize another payment up to \$300 for disaster related expenses.*

CHAPTER 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71V - LOW INCOME ENERGY ASSISTANCE PROGRAM

SECTION .0300 – MODIFIED CRISIS INTERVENTION PROGRAM

10A NCAC 71V .0301 GROUPS COVERED

(a) The rules in this Section set forth the regulations for the Modified Crisis Intervention Program that will be administered in counties that were impacted by Hurricane Isabel and declared disaster areas by the Federal Emergency Management Administration. The rules in 10A NCAC 71V .0200 set forth the regulations for the remainder of the counties in the State.
 (b) "Residence" means a household residing in the counties designated in Paragraph (a) of this Rule.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

10A NCAC 71V .0302 ELIGIBILITY REQUIREMENTS

A household must meet the eligibility requirements for the Crisis Intervention Program as prescribed in 10A NCAC 71V .0201.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

10A NCAC 71V .0303 BENEFIT LEVELS

The maximum payment to a household shall not exceed six hundred dollars (\$600.00) in the 2003-2004 state fiscal year. The maximum payment of six hundred dollars (\$600.00) is derived from the benefit level authorized in 10A NCAC 71V .0202 and an additional payment not to exceed three hundred dollars (\$300.00) for services related to a heating or cooling crisis experienced during Hurricane Isabel. Payments may vary based upon the severity of the crisis and the services needed.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

10A NCAC 71V .0304 METHOD OF PAYMENT

Methods of payment include direct payments to recipients, fuel payments on behalf of recipients, provision of in-kind services or temporary shelter and minor home repairs.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

10A NCAC 71V .0305 OVERPAYMENTS AND SUSPECTED FRAUD

The rules in 10A NCAC 71W .0604 and 71W .0606 will govern for overpayments and suspected fraud.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

10A NCAC 71V .0306 APPEALS

The rules in 10A NCAC 71V .0108 will govern for appeals.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: NC Marine Fisheries Commission

Rule Citation: 15A NCAC 03S .0103

Effective Date: October 14, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Reason for Action: The available funds were provided for reasons other than relief from the disastrous effects of hurricane Isabel. However, if they are distributed according to the proposed expedited process, they will be, at least in part, meeting the immediate needs of those affected by the hurricane. Most of the fishermen, dealers and processors that are eligible for compensation are those that were also most significantly affected by the hurricane. Many lost their businesses, homes, and fishing equipment. While other forms of state and federal assistance will become available, these could be immediately used to pay for medicines, food, shelter, etc. Adoption of the proposed rules as emergency rules and expedient distribution of these funds is necessary to respond to a serious and unforeseen threat to public health and safety.

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03S – ECONOMIC ASSISTANCE TO THE FISHING INDUSTRY

SECTION .0100 - ECONOMIC ASSISTANCE PROGRAMS

15A NCAC 03S .0103 GRANTS TO COMMERCIAL BLUE CRABBING INDUSTRY

(a) Eligibility

(1) Economic assistance from this program is available for the following:

- (A) Fishermen: Only fishermen who landed blue crab (Callinectes spp.) using crab pots, peeler pots, crab trawls, crab dredges, and trotlines, as defined by the North Carolina Division of Marine Fisheries Trip Ticket Program, in North Carolina during calendar years 2000, 2001 or 2002 and who held a valid Standard (SCFL) or Retired Standard Commercial Fishing License (RSCFL) at the time of landing for at least one of those years.
(B) Fish Dealers: Only fish dealers who reported blue crab (Callinectes spp.) landings from crab pots, peeler pots, crab trawls, crab dredges, and trotlines, as defined by the North

(b) Process

Carolina Division of Marine Fisheries Trip Ticket Program, during calendar years 2000, 2001 or 2002 and who held a valid North Carolina Fish Dealer License at the time of transaction for at least one of those three years.

(C) Crab Processors: Only blue crab processors who held a valid certification as a Department of Environment and Natural Resources, Division of Environmental Health certified crustacean meat processor, and employed persons who processed domestic blue crab meat during calendar years 2000, 2001 or 2002. For the purposes of this Section, processing means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.

(2) The Division of Marine Fisheries shall identify which fishermen and fish dealers are eligible for economic assistance under this program based upon blue crabs landed in North Carolina and reported on North Carolina trip tickets at the time of landing or transaction and submitted in accordance with 15A NCAC 03I .0114.

(A) Where assignment of a license occurred, the SCFL holder who assigned the SCFL will be credited with landings under this program.

(B) Where a SCFL or RSCFL was transferred during 2000, 2001 or 2002, each SCFL or RSCFL holder will be credited with landings under this program based upon issuance of the transferred license at the start of the day in which the landings were reported.

(3) The Division will identify eligible crab processors by using Division of Environment Health certification and inspection records to verify processing activities.

(A) Eligible crab processors will be determined by the name listed on the Permit and Certificate of Compliance document or permit application provided by the Division of Environmental Health.

(B) Where ownership of a crab processor was transferred during 2000, 2001 or 2002, each owner's eligibility for their period of ownership shall be determined by the criteria in Part (a)(1)(C) of this Rule.

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- (1) Funds from the grant will be utilized as follows:
 - (A) Five percent of the total funds will be used for administration of the program.
 - (B) 12 percent of the total funds will be set aside for use by the Division of Marine Fisheries to resolve economic assistance disputes, with the remainder of the funds being provided to the N.C. Department of Agriculture for a North Carolina blue crab marketing program.
 - (C) The remaining funds shall be divided equally among blue crab fishermen, fish dealers and crab processors except for an amount determined by the Division to be reserved for use in settling any further disputes on the final decision on economic assistance, as follows:
 - (i) One third of the remaining funds will be awarded to eligible fishermen based upon each fisherman's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina Trip Tickets for the calendar years 2000, 2001 and 2002 except that fishermen with recorded cumulative landings less than 10,000 pounds will receive economic assistance in the amount of fifty dollars (\$50.00);
 - (ii) One third of the remaining funds will be awarded to eligible fish dealer's based upon each fish dealer's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina trip tickets for the calendar years 2000, 2001 and 2002 except that fish dealer's with recorded cumulative landings less than 10,000 pounds will receive economic assistance in the amount of fifty dollars (\$50.00); and
 - (iii) One third of the remaining funds will be awarded to eligible crab processors based upon each processors proportional contribution, in percentage, to the highest annual employment of employees processing blue crabs, as reported by the Division of Environmental Health during the calendar years of 2000, 2001, or 2002.
- (2) Notification and distribution of assistance:
 - (A) Each fisherman, fish dealer and crab processor determined by the Division of Marine Fisheries to be eligible for economic assistance under this program shall be notified by certified mail, return receipt requested of their eligibility. Notification of eligibility will include the total verified blue crab landings for fishermen or fish dealers, the reported employment levels for crab processors, credited to each person for the purpose of this program, and an economic assistance check in the amount qualified for.
 - (B) Any fisherman, fish dealer or processor claiming blue crab landings who does not receive an eligibility notification letter and economic assistance check shall contact the Morehead City Office of the Division of Marine Fisheries within the time period specified in the published legal notice setting forth the economic assistance award determination period.
 - (C) The right to dispute the amount of assistance awarded is waived when the fisherman, fish dealer or crab processor cashes the economic assistance check. (D) If a fisherman or dealer claims additional blue crab landings, beyond those identified by the Division of Marine Fisheries upon which to base the level of economic assistance, that person must provide copies of North Carolina trip tickets that were completed at the time of landing with the signed response form to document the claim within 20 days of receipt of the notification letter and economic assistance check. The Division of Marine Fisheries will evaluate such claims, and the fisherman or dealer landings will be adjusted accordingly if the claims are deemed valid. If a crab processor disputes the number of employees involved in blue crab processing, as reported to the Division of Environmental Health, that person must provide the Division of Marine Fisheries with documentation that substantiates blue

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crab processing employment, and blue crab production reports for the years 2000, 2001 and 2002 to document the claim.

- (E) The Grants to Commercial Blue Crabbing Industry for Economic Losses Program shall terminate upon depletion of funds appropriated by

the United States Congress to North Carolina for this purpose.

*History Note: Authority G.S. 113-226, 143B-289.52 (d); 150B-21.1 (a)(2),(3);
Emergency Adoption Eff. October 14, 2003.*

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This Section of the Register may also include, 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.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: Commission for Health Services

Rule Citation: 10A NCAC 41A .0101, .0212

Effective Date: November 1, 2003

Date Approved by the Rules Review Commission: September 26, 2003

Reason for Action:

10A NCAC 41A .0101 – Monkeypox virus recently has been identified as a serious public health threat that needs to be identified quickly if it is to be effectively controlled by state and local health programs. Consequently, adding it to the list of reportable diseases and conditions is imperative if it is to be identified to state and local public health officials in a timely manner.

10A NCAC 41A .0212 – Severe acute respiratory syndrome (SARS) has been identified as a serious public health threat. It remains infectious in the bodies of its victims, and it therefore is imperative that bodies of SARS victims be handled with special precautions if SARS is to be effectively controlled by state and local public health programs.

CHAPTER 41 - EPIDEMIOLOGY HEALTH

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;

- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;
- (14) *Escherichia coli*, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis - 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- (18) foodborne disease, including but not limited to *Clostridium perfringens*, staphylococcal, and *Bacillus cereus* - 24 hours;
- (19) gonorrhea - 24 hours;
- (20) granuloma inguinale - 24 hours;
- (21) *Haemophilus influenzae*, invasive disease - 24 hours;
- (22) Hantavirus infection – 7 days;
- (23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- (24) Hemorrhagic fever virus infection – 24 hours;
- (25) hepatitis A - 24 hours;
- (26) hepatitis B - 24 hours;
- (27) hepatitis B carriage - 7 days;
- (28) hepatitis C, acute - 7 days;
- (29) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- (30) legionellosis - 7 days;
- (31) leptospirosis - 7 days;
- (32) listeriosis – 24 hours;
- (33) Lyme disease - 7 days;
- (34) lymphogranuloma venereum - 7 days;
- (35) malaria - 7 days;
- (36) measles (rubeola) - 24 hours;
- (37) meningitis, pneumococcal - 7 days;
- (38) meningococcal disease - 24 hours;
- (39) monkeypox – 24 hours;
- (40) mumps - 7 days;
- (41) nongonococcal urethritis - 7 days;
- (42) plague - 24 hours;
- (43) paralytic poliomyelitis - 24 hours;
- (44) psittacosis - 7 days;
- (45) Q fever - 7 days;
- (46) rabies, human - 24 hours;
- (47) Rocky Mountain spotted fever - 7 days;
- (48) rubella - 24 hours;
- (49) rubella congenital syndrome - 7 days;
- (50) salmonellosis - 24 hours;
- (51) severe acute respiratory syndrome (SARS) – 24 hours;
- (52) shigellosis - 24 hours;
- (53) smallpox – 24 hours;

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- (54) streptococcal infection, Group A, invasive disease - 7 days;
- (55) syphilis - 24 hours;
- (56) tetanus - 7 days;
- (57) toxic shock syndrome - 7 days;
- (58) toxoplasmosis, congenital - 7 days;
- (59) trichinosis - 7 days;
- (60) tuberculosis - 24 hours;
- (61) tularemia - 24 hours;
- (62) typhoid - 24 hours;
- (63) typhoid carriage (*Salmonella typhi*) - 7 days;
- (64) typhus, epidemic (louse-borne) - 7 days;
- (65) vibrio infection (other than cholera) - 24 hours;
- (66) whooping cough - 24 hours;
- (67) vaccinia - 24 hours;
- (68) yellow fever - 7 days.
- (b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.
- (c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:
- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
- (A) Any hantavirus or hemorrhagic fever virus.
- (B) Arthropod-borne virus (any type).
- (C) *Bacillus anthracis*, the cause of anthrax.
- (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
- (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
- (F) *Brucella spp.*, the causes of brucellosis.
- (G) *Campylobacter spp.*, the causes of campylobacteriosis.
- (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
- (I) *Clostridium botulinum*, a cause of botulism.
- (J) *Clostridium tetani*, the cause of tetanus.
- (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- (L) *Coxiella burnetii*, the cause of Q fever.
- (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
- (O) *Ehrlichia spp.*, the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella spp.*, the causes of legionellosis.
- (U) *Leptospira spp.*, the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) Monkeypox.
- (X) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (Y) Poliovirus (any), the cause of poliomyelitis.
- (Z) Rabies virus.
- (AA) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (BB) Rubella virus.
- (CC) *Salmonella spp.*, the causes of salmonellosis.
- (DD) *Shigella spp.*, the causes of shigellosis.
- (EE) Smallpox virus, the cause of smallpox.
- (FF) *Trichinella spiralis*, the cause of trichinosis.
- (GG) *Vibrio spp.*, the causes of cholera and other vibrioses.
- (HH) Yellow fever virus.
- (II) Vaccinia virus.
- (JJ) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A *Streptococcus pyogenes* (group A streptococci).
- (B) *Haemophilus influenzae*, serotype b.
- (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (D) Vancomycin-resistant *Enterococcus spp.*
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:

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- (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
- (ii) Any hantavirus or hemorrhagic fever virus.
- (iii) *Chlamydia psittaci*, the cause of psittacosis.
- (iv) *Coxiella burnetii*, the cause of Q fever.
- (v) Dengue virus.
- (vi) *Ehrlichia spp.*, the causes of ehrlichiosis.
- (vii) Measles (rubeola) virus.
- (viii) Mumps virus.
- (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (x) Rubella virus.
- (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
 - (i) *Chlamydia psittaci*
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001; Amended Eff. April 1, 2003; Temporary Amendment Eff. November 1, 2003; May 16, 2003.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

10A NCAC 41A .0212 HANDLING AND TRANSPORTATION OF BODIES

(a) It shall be the duty of the physician attending any person who dies and is known to be infected with HIV, plague, or hepatitis B or any person who dies and is known or reasonably suspected to be infected with smallpox, rabies, severe acute respiratory syndrome (SARS), or Jakob-Creutzfeldt to provide written notification to all individuals handling the body of the proper precautions to prevent infection. This written notification shall be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician shall notify the funeral service personnel verbally of the precautions required as soon as the physician becomes aware of the death. These precautions are noted in Paragraphs (b) and (c).

- (b) The body of any person who died and is known or reasonably suspected to be infected with smallpox or severe acute respiratory syndrome (SARS) or any person who died and is known to be infected with plague shall not be embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director. Nothing in this Paragraph shall prohibit cremation.
- (c) Persons handling the body of any person who died and is known to be infected with HIV or hepatitis B or any person who died and is known or reasonably suspected to be infected with Jakob-Creutzfeldt or rabies shall be provided written notification to observe blood and body fluid precautions.

History Note: Authority G.S. 130A-144; 130A-146; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Recodified from 15A NCAC 19A .0204 Eff. June 11, 1991; Temporary Amendment Eff. November 1, 2003.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02B .0225, .0316*

Effective Date: *October 7, 2003*

Date Approved by the Rules Review Commission: *September 26, 2003*

Reason for Action: *See Session Law 2003-433 House Bill 566*

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

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

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

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

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the

assigned narrative and numerical water quality standards.

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

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

(c) Quality Standards for ORW

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

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

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 2B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

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

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

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

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

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 02H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing

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

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

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

- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
- (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
- (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
- (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear

Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

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

- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
- (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and drain to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH₃-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(14)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

History Note: Authority G.S. 143-214.1; Eff. October 1, 1995; Amended Eff. August 1, 2000; April 1, 1996; January 1, 1996; Temporary Amendment Eff. October 7, 2003.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

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

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
Beaufort County
Dare County
Edgecombe County

Franklin County
 Granville County
 Halifax County
 Hyde County
 Martin County
 Nash County
 Pamlico County
 Person County
 Pitt County
 Vance County
 Warren County
 Washington County
 Wilson County

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

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

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

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

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

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

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

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

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective

January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

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

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

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

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

(k) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective October 7, 2003 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] and a portion of Sandy Creek [Index Number 28-78-1-(14)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the waters that drain to these two creek portions to include only the ORW management strategy as represented by "+". The "+" symbol as used in this Paragraph means that all undesignated waterbodies that drain to the portions of the two creeks referenced in this Paragraph, shall comply with Paragraph (c) of Rule .0225 of this Section in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. September 1, 1996; January 1, 1996; April 1, 1994; August 3, 1992; August 1, 1990; Temporary Amendment Eff. October 7, 2003.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Rule-making Agency: *North Carolina Department of Transportation – Division of Highways*

Rule Citation: *19A NCAC 02E .0216-.0222*

Effective Date: *October 13, 2003*

Date Approved by the Rules Review Commission: *September 26, 2003*

Reason for Action:

19A NCAC 02E .0216 – Pursuant to the requirements in SB 38, S.L. 2003-184 which was ratified June 12, 2003 DOT transmitted the proposed temporary rule to OAH on July 11, 2003. Section 3 of SB 38 directed DOT to submit temporary rules to OAH. The amendments to this Rule clarify language and add attractions to eligible criteria for the Logo Sign Program.

19A NCAC 02E .0217-.0218 – Pursuant to S.L. 2003-184, DOT transmitted Notice of Repeal to OAH on July 11, 2003. Notice of Repeal was published in the August 1, 2003 NCR. These rules are proposed for repeal because these definitions are no longer applicable for the Logo Sign Program.

19A NCAC 02E .0219 – Pursuant to the requirements in SB 38, S.L. 2003-184 which was ratified June 12, 2003 DOT transmitted the proposed temporary rule to OAH on July 11, 2003. Section 3 of SB 38 directed DOT to submit temporary rules to OAH. The amendments to this Rule set conditions for eligibility for the Logo Sign Program.

19A NCAC 02E .0220 – Pursuant to the requirements in SB 38, S.L. 2003-184 DOT transmitted the proposed temporary rule to OAH on July 11, 2003. The amendments to this Rule clarify language and set conditions for changes in the Logo Sign Program.

19A NCAC 02E .0221 – Pursuant to the requirements in SB 38, S.L. 2003-184 which was ratified June 12, 2003 DOT transmitted the proposed temporary rule to OAH on July 11, 2003. The rule is amended to reflect changes in the fee structure and simplify the Logo Sign Program.

19A NCAC 02E .0222 – The rule is proposed for repeal because the conditions set out in this Rule are no longer applicable for the Logo Signing Program.

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

19A NCAC 02E .0216 SPECIFIC SERVICE SIGNING (LOGO) PROGRAM

The Specific Service Signing Program, hereinafter "Program", provides eligible businesses with the opportunity to be listed on official signs within the right-of-way of fully controlled access highways. The Traffic Engineering Branch is responsible for administering the program and receiving requests for information concerning the Program. Requests for information may be directed to the State Traffic Engineer, Division of

Highways, Department of Transportation., 1561 Mail Service Center, Raleigh, NC_27699-1561. Division Engineers for the division in which the interchange is located are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. April 1, 1994; October 1, 1993; October 1, 1991; Temporary Amendment Eff. October 13, 2003.

19A NCAC 02E .0217 SPECIFIC INFORMATION PROGRAM DEFINITIONS

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 24 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. April 1, 1994; October 1, 1993; April 1, 1986; November 1, 1985; Temporary Repeal Eff. October 13, 2003.

19A NCAC 02E .0218 LOCATION OF PANELS

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. August 1, 1998; September 1, 1994; April 1, 1994; October 1, 1993; October 1, 1991; Temporary Repeal Eff. October 13, 2003.

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

Businesses may participate in the program provided said businesses comply with the following criteria:

- (1) The individual business installation whose name, symbol or trademark appears on a business panel shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, age, disability, or national origin. . .
- (2) An individual business, under construction, may apply to participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application. No business panel shall be displayed for a business which is not open for business and in full compliance with the standards required by the program. A business under construction shall not be allowed to apply for participation in the

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- program if its participation would prevent an existing open business application from participating.
- (3) Businesses may apply for participation in the program on a first-come, first-served basis until the maximum number of panels on the logo sign for that service are reached. If a business's panels are removed and space is available on the sign, the first business to contact the Department shall be allowed priority for the vacant space.
- (4) The maximum distance that a "GAS", "FOOD", or "LODGING" service may be located from the fully controlled access highway shall not exceed three miles at rural interchange approaches and one mile at urban interchange approaches in either direction via an all-weather road. Where no qualifying services exist within three miles/one mile, provisional contracts are permitted where the maximum distance may be increased to six miles at rural interchange approaches and three miles at urban interchange approaches, provided the total travel distance to the business and return to the interchange does not exceed twelve miles. A rural interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in a rural unincorporated area or within the corporate limits of a city or town with a population of less than 40,000. An urban interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in or within one mile of the corporate limits of a city or town with a population equal to or greater than 40,000. Provisional contracts shall be written with the understanding that if a closer business applies, qualifies, and is within the three miles/one mile radius as applicable, and there is not otherwise room on the sign for the new business, then the provisional contract of the furthest business from the intersection shall be cancelled and the business panels shall be removed at the annual contract renewal date. The maximum distance for a "CAMPING" service shall not exceed 15 miles in either direction via an all-weather road, and the maximum distance for an "ATTRACTION" service shall not exceed 15 miles in either direction via an all-weather road.
- (5) "GAS" and associated services. Criteria for erection of a business panel on a sign shall include:
- (a) appropriate licensing as required by law;
 - (b) vehicle services for fuel (gas, diesel, or alternative fuels), motor oil, and water;
 - (c) on premise restroom facilities and drinking water suitable for public use;
 - (d) an on premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week; and
 - (f) on premise telephone available for emergency use by the public.
- (6) "FOOD" Criteria for erection of a business panel on a sign shall include:
- (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) businesses shall operate year round at least eight continuous hours per day six days per week;
 - (c) indoor seating for at least 20 persons;
 - (d) on premise public restroom facilities; and
 - (e) on premise telephone available for emergency use by the public.
- (7) "LODGING". Criteria for erection of a business panel on a sign shall include:
- (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) overnight sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo sign panels;
 - (c) off-street vehicle parking for each lodging room for rent;
 - (d) year-round operation; and
 - (e) on premise telephone available for emergency use by the public.
- (8) "CAMPING". Criteria for erection of a business panel on a sign shall include:
- (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having water and sewer systems which have been duly inspected and

- (b) approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations (including public restroom facilities) for all types of travel-trailers, tents and camping vehicles;
 - (c) parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business panel by the department during off seasons, if operated on a seasonal basis; and
 - (f) on premise telephone available for emergency use by the public.
- (9) "ATTRACTION". Criteria for erection of a sign on a panel for any business or establishment other than an agricultural facility shall include:
- (a) licensing as required by state law;
 - (b) full private ownership (no public ownership by a unit of government);
 - (c) on premise public restroom facilities;
 - (d) continuously open to the motoring public without appointment at least eight hours per day, five days per week during its normal operating season or the normal operating season for the type of business;
 - (e) adequate parking accommodations for a minimum of 10 motor vehicles (cars);
 - (f) only facilities which have the primary purpose of providing amusement, historical, cultural, or leisure activities to the public; and
 - (g) on premise telephone available for emergency use by the public.

(c) Combination signs are defined as the large rectangular signs that include space for individual business logo panels with more than one specific service. Provisional contracts for the businesses on combination signs shall be required for all businesses other than the first six fully qualifying GAS panels. Combination signs shall be allowed if one or more of the following conditions are met:

- (1) if space is not available for separate sign installations;
- (2) if the number of businesses desiring to participate exceeds the number of spaces available for business panels on sign; or
- (3) if the number of businesses desiring participation does not warrant the installation of separate sign installations.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. August 1, 1998; October 1, 1993; November 1, 1987; Temporary Amendment Eff. October 13, 2003.

19A NCAC 02E .0221 FEES

All logo signs shall be constructed and maintained by the Department. These logo signs shall be owned by the Department. The participating logo business shall pay an annual fee set out in this Rule. All logo_contracts existing under prior administrative code provisions are terminated in accordance with the terms of those_contracts. However, existing participants shall not be required to reapply, but shall be required to sign an appropriate contract in accordance with the new rules in order to continue their participation.

- (1) The fees for participation in the Logo program are as follows:
 - (a) Mainline, ramp, and trailblazer panels are billed a one-year contract fee of three hundred dollars (\$300.00) per each mainline, ramp, and trailblazer panel. Contracts shall be renewed annually and every participating business that__meets program requirements, has a valid contract and pays all required fees shall be automatically renewed. The annual fee shall be paid prior to initial installation.

- (2) . The business shall provide a new or renovated business panel when necessary due to_damages to the business sign caused by acts of vandalism, accidents, or natural causes including natural deterioration. . If the Department replaces a business panel on a logo sign or removes or masks a business panel because of seasonal operation, there shall be no additional charge to the business.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; October 1, 1991; Temporary Amendment Eff. October 13, 2003.

19A NCAC 02E .0220 COMPOSITION OF LOGO SIGNS AND BUSINESS PANELS

- (a) No business panel shall be displayed which would mislead or misinform the traveling public. Any message, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device is prohibited.
- (b) Each specific service business panel shall include only information that is related to that specific service.
No more than one specific service type, such as GAS, FOOD, or LODGING, shall be allowed on a business panel.

- (3) Fees may be paid by check or money order and are due in advance of the period of service covered by said fee. Failure to pay a charge when due is grounds for removal of the business signs and termination of the contract.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; September 1, 1990;

Temporary Amendment Eff. October 13, 2003.

19A NCAC 02E .0222 CONTRACTS WITH THE DEPARTMENT

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; December 1, 1994; October 1, 1993; October 1, 1992, September 1, 1990;
Temporary Repeal Eff. October 13, 2003.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, October 16, 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, October 10, 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

November 20, 2003 December 18, 2003

RULES REVIEW COMMISSION

Commission Review/Administrative Rules

Log of Filings (Log #203)

September 21, 2003 through October 20, 2003

MEDICAL CARE COMMISSION/DIVISION OF MEDICAL ASSISTANCE

Definitions	10A NCAC 21A .0201	Amend
Corrective Actions	10A NCAC 21A .0602	Amend
Time Limits for Corrections	10A NCAC 21A .0603	Amend
Monitoring Thresholds and Corrective Action	10A NCAC 21A .0605	Amend
Timeliness	10A NCAC 21A .0606	Amend
Local Corrective Action Team	10A NCAC 21A .0607	Amend
State Corrective Action Team	10A NCAC 21A .0608	Amend
Acceptance of Application	10A NCAC 21B .0201	Amend
Face to Face Interview	10A NCAC 21B .0202	Amend
Application Processing Standards	10A NCAC 21B .0203	Amend
Effective Date of Assistance	10A NCAC 21B .0204	Amend
Disposition	10A NCAC 21B .0206	Amend
Referrals at a Face to Face Interview	10A NCAC 21B .0207	Amend
Hours for Accepting Financial and Medical Assist	10A NCAC 21B .0209	Amend
Reserve	10A NCAC 21B .0310	Amend
Transfer or Resources	10A NCAC 21B .0311	Amend

MEDICAL CARE COMMISSION/COMMISSION FOR HEALTH SERVICES

Infection Control Health Care Settings	10ANCAC 41A .0206	Amend
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JUSTICE/NC PRIVATE PROTECTIVE SERVICES BOARD

Fees for Licenses and Trainee Permits	12 NCAC 07D .0202	Amend
Fees for Unarmed Security Guard Registration	12 NCAC 07D .0702	Amend
Fees for Armed Security Guard Firearm Registration	12 NCAC 07D .0802	Amend
Fees for Firearms Trainer Certificate	12 NCAC 07D .0903	Amend
Pre-Delivery Report for Firearms Training Courses	12 NCAC 07D .0907	Adopt
Post-Delivery Report for Firearms Training Courses	12 NCAC 07D .0908	Adopt

JUSTICE/CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION

Investigation of Violation of Rules	12 NCAC 09A .0201	Amend
Summary Suspensions	12 NCAC 09A .0206	Amend
Administration of Programs	12 NCAC 09C .0101	Amend
Investigation of Violation of Rules	12 NCAC 09G .0501	Amend
Summary Suspensions	12 NCAC 09G .0506	Amend

DEPARTMENT OF LABOR

Discrimination Against Miners	13 NCAC 06 .0309	Amend
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RULES REVIEW COMMISSION

Incorporated by Reference	13 NCAC 07A .0301	Amend
Definitions Relative to ABC Restrictions	13 NCAC 12 .0408	Amend
Inspection Fee Schedule	13 NCAC 15 .0704	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Catawba River Basin	15A NCAC 02B .0308	Amend/
REVENUE, DEPARTMENT OF		
Spoilage or Destruction of Non-tax paid Beer or Wine	17 NCAC 04E .0301	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Acquisition of Right of Way for Secondary	19A NCAC 02C .0108	Amend
STATE BOARDS/STATE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS		
Review of Examination	21 NCAC 50 .0308	Amend
Permits	21 NCAC 50 .0402	Amend
Active Employment	21 NCAC 50 .0404	Amend
Change of Trade Name	21 NCAC 50 .0408	Amend
Reinstatement of Expired License	21 NCAC 50 .0409	Amend
Joint Venture	21 NCAC 50 .0502	Amend
Administrative Hearing Procedures	21 NCAC 50 .1014	Amend
Examination Fees	21 NCAC 50 .1101	Amend
License Fees	21 NCAC 50 .1102	Amend
Fees for Copies of Records and Returned Checks	21 NCAC 50 .1104	Amend
STATE PERSONNEL COMMISSION/STATE PERSONNEL COMMISSION		
Eligible Employees	25 NCAC 01E .1402	Amend
Family Illness Leave	25 NCAC 01E .1412	Adopt
Purpose	25 NCAC 01K .0311	Amend
Eligibility	25 NCAC 01K .0312	Amend
Approved Courses	25NCAC 01K .0313	Amend
Educational Leave	25 NCAC 01K .0314	Amend
Thesis/Dissertation Research Courses	25 NCAC 01K .0315	Repeal
Thesis/Dissertation Research Courses	25 NCAC 01K .0315	Repeal
Academic Costs	25 NCAC 01K .0316	Amend
Reimbursement of Academic Costs	25 NCAC 01K .0317	Amend
Tax Status	25 NCAC 01K .0318	Repeal
Application Procedures	25 NCAC 01K .0319	Repeal
Exceptional Situations	25 NCAC 01K .0320	Amend
Courses Taken At Agency/University Request	25 NCAC 01K .0321	Amend
Extended Educational Leave	25 NCAC 01K .0322	Amend
Certification/Licensing	25 NCAC 01K .0323	Amend
Administration Responsibility	25 NCAC 01K .0324	Amend

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>				
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
NC ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
<u>AGRICULTURE</u>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
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. DHHS, 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	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
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 June Locklear	02 DHR 1672	Wade	06/10/03	
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	
Oncology Svcs Corp & MountainSide Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
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	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	

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Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Rachel Peek, Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
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Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnigh v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Jamitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03	
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
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Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
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	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
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Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03	
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03	
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John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03	
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03	18:06 NCR 444
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03	
Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03	

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Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR 229
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Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03	
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03	
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03	
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03	
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Chris Azar v. Department of Transportation	03/DOT 1345	Morrison	09/08/03	
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DEPARTMENT OF STATE TREASURER

Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03	
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Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03	
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03	

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Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 ¹	Chess	05/14/03	
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Michael E Hendrix v. Caldwell Co. Dept of Environmental Health	03 EHR 0006	Gray	07/02/03	
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Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03	
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Redditt Alexander, Ida L Alexander v. Co. of Durham, Eng. Dept.	03 EHR 1074	Morrison	07/31/03	
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Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03	
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Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR 338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR 405
Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03	
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03	
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03	

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David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abegunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
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Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03
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Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
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Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
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Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03

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