

NORTH CAROLINA

REGISTER

IN THIS ISSUE



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I. EXECUTIVE ORDERS

| | |
|------------------------------|-----------|
| Executive Order No. 67 | 676 - 677 |
| Executive Order No. 68 | 678 |
| Executive Order No. 69 | 679 - 680 |

II. IN ADDITION

| | |
|--|-----------|
| NC Housing Finance Agency | 681 - 682 |
| Labor - OSHA | 683 - 684 |
| 2005 Low-Income Housing Tax Credit | 685 - 711 |
| Qualified Allocation Plan for NC | |

III. PROPOSED RULES

Health and Human Services

| | |
|-------------------------------|-----------|
| Medical Care Commission | 712 - 714 |
|-------------------------------|-----------|

Insurance

| | |
|--------------------------------------|-----------|
| Home Inspector Licensure Board | 714 - 720 |
|--------------------------------------|-----------|

Justice

| | |
|------------------------------------|-----------|
| Alarm System Licensing Board | 720 - 721 |
|------------------------------------|-----------|

Licensing Boards

| | |
|--------------------------------------|-----------|
| Landscape Architects, Board of | 721 - 724 |
| Pharmacy, Board of | 724 - 727 |

IV. RULES REVIEW COMMISSION..... 728 - 736

V. CONTESTED CASE DECISIONS

| | |
|------------------------------|-----------|
| Index to ALJ Decisions | 737 - 740 |
|------------------------------|-----------|

For the **CUMULATIVE INDEX to the NC Register** go to:
<http://oahnt.oah.state.nc.us/register/CI.pdf>

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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 | |
| 18 | SECRETARY OF STATE | 25 Interpreter/Transliterator | |
| 19A | TRANSPORTATION | 26 Landscape Architects | |
| 20 | TREASURER | 28 Landscape Contractors | |
| 21* | OCCUPATIONAL LICENSING BOARDS | 29 Locksmith Licensing | |
| 22 | ADMINISTRATIVE PROCEDURES (REPEALED) | 30 Massage & Bodywork Therapy | |
| 23 | COMMUNITY COLLEGES | 31 Marital and Family Therapy | |
| 24* | INDEPENDENT AGENCIES | 32 Medical Examiners | |
| 25 | STATE PERSONNEL | 33 Midwifery Joint Committee | |
| 26 | ADMINISTRATIVE HEARINGS | 34 Funeral Service | |
| 27 | NC STATE BAR | 36 Nursing | |
| 28 | JUVENILE JUSTICE AND DELINQUENCY PREVENTION | 37 Nursing Home Administrators | |
| | | 38 Occupational Therapists | |
| | | 40 Opticians | |
| | | 42 Optometry | |
| | | 44 Osteopathic Examination (Repealed) | |
| | | 45 Pastoral Counselors, Fee-Based Practicing | |
| | | 46 Pharmacy | |
| | | 48 Physical Therapy Examiners | |
| | | 50 Plumbing, Heating & Fire Sprinkler Contractors | |
| | | 52 Podiatry Examiners | |
| | | 53 Professional Counselors | |
| | | 54 Psychology | |
| | | 56 Professional Engineers & Land Surveyors | |
| | | 57 Real Estate Appraisal | |
| | | 58 Real Estate Commission | |
| | | 60 Refrigeration Examiners | |
| | | 61 Respiratory Care | |
| | | 62 Sanitarian Examiners | |
| | | 63 Social Work Certification | |
| | | 64 Speech & Language Pathologists & Audiologists | |
| | | 65 Therapeutic Recreation Certification | |
| | | 66 Veterinary Medical | |
| | | 68 Substance Abuse Professionals | |
| | | 69 Soil Scientists | |

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 January 2004 – December 2004

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

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: 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.

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

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

EXECUTIVE ORDER NO. 67
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANES CHARLEY AND FRANCES

WHEREAS, the Governor of Florida has proclaimed that a State of Emergency and State of Disaster exists in Florida due to Hurricanes Charley and Frances and thereby, has requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the State of Florida; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in that state will likely suffer losses and, therefore suffer an imminent threat of widespread damage.

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

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation **shall waive** certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-119, 20-382, 105-449.47, 105-449.49, for the vehicles transporting equipment and supplies along North Carolina Interstate roadways, en route to Florida's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 95,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.
- (B) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- (D) The \$200.00 fee listed in N.C.G.S. § 20-119, for an annual permit to transport mobile homes. This only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter weigh stations as required under N.C.G.S. § 20-118.1. However, these same transporters **shall** have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from NC DOT, and the manufacturers bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements.

EXECUTIVE ORDERS

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate routes **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the State of Florida, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 51 days from the date of this Order.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3, in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricanes Charley and Frances.

Executive Order Number 64 is hereby amended and superseded by this Executive Order. This Executive Order is effective immediately and shall remain in effect for fifty-one (51) days.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this 10th day of September, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 68
PROCLAMATION OF A STATE OF EMERGENCY AND STATE OF DISASTER
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1. I have determined that a state of emergency and disaster, as defined in G.S. 166A-4(3) and G. S. 14-288.1(10), exists in the State of North Carolina, as a result of Hurricane Ivan which is expected to produce excessive rainfall, widespread flooding and tornadoes across the regions of the State.

Section 2. Pursuant to G. S. 166A-6 and 14-288.15, I therefore proclaim the existence of a state of emergency and disaster in North Carolina.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provision of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to the Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency or threatened disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this the sixteenth day of September in the year two thousand and four.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 69
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANE IVAN

WHEREAS, I have proclaimed that a State of Emergency and Disaster exists in North Carolina due to Hurricane Ivan thereby, justifying an exemption from 49 CFR Part 390.21 (Marking of Vehicles) and Part 395 (Hours of Service) of the Federal Motor Carrier Safety Regulations; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing FOOD, FUEL, EQUIPMENT, SUPPLIES AND UTILITIES to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and, the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. § 166-A-4(3).

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

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49, for the vehicles transporting FOOD, FUEL, EQUIPMENT, SUPPLIES AND UTILITIES along North Carolina roadways to our grief stricken counties affected by Hurricane Ivan.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (D) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (E) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (F) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (E) The \$50.00 fee listed in N.C.G.S. § 105-449.49, for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1), applies.
- (F) The registration requirements under N.C.G.S. § 20-382, concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (G) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 5. The waiver of regulations under 49 CFR Part 390.21 (Marking of Vehicles) and Part 395 (Hours of Service) of the Federal Motor Carrier Safety Regulations, **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

EXECUTIVE ORDERS

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Ivan.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the city of Raleigh this the 17th day of September, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine Marshall
Secretary of State

**North Carolina Housing Finance Agency
NORTH CAROLINA HOME PROTECTION PILOT PROGRAM AND LOAN FUND**

Proposed Procedures for Publication in *North Carolina Register* 19:08

In accordance with H.B. 1414, Part XX.- A, the North Carolina Home Protection Pilot Program and Loan Fund will be initiated by the North Carolina Housing Finance Agency (the Agency).

The Agency reserves the authority to make any and all changes to this proposed structure based on the public interest. The focus of this pilot program and loan fund will be to assist households faced with losing their homes because of job loss associated with changing economic conditions.

Demonstration Area for Pilot Program

A limited number of counties will be selected for inclusion in the pilot program and loan fund to participate, at the discretion of the Agency, on the basis of: increased rates of foreclosure, actual foreclosure filings, economic and unemployment data, opportunities for reemployment, an evaluation of the capacity of local counseling agencies, geographic diversity, availability of funds, and other factors the Agency deems relevant.

The pilot program will consist of two components: a loan fund and support for foreclosure prevention and mitigation efforts.

Loan Fund

The administration of this component of the program involves a partnership with local nonprofit counseling agencies and Agency staff.

Eligible counseling agencies must have experience in very specialized housing counseling techniques, such as mortgage default and delinquency counseling, as well as foreclosure prevention and loss mitigation. Eligible agencies must demonstrate capacity to perform under the pilot program and they will screen potential loan recipients, evaluating their personal finance, employment, and property ownership situations. Counseling agencies may employ assistance or guidance from legal service providers when borrower's evaluation deems it necessary.

Borrowers who provide evidence of an actual or impending mortgage delinquency and have been qualified for unemployment benefits by the N.C. Employment Security Commission may be eligible under the loan fund. Applicants must also demonstrate a financial or employment situation that offers a reasonable expectation of resuming regular, monthly mortgage payments prior to participation in the loan fund. With the assistance of counseling agencies, borrowers will complete a required application and supplementary documentation, in the form prescribed under the program, for submission to the Agency for review.

The Agency will review the borrower's application taking income, credit, job history/employment, first mortgage loan financing structure and terms, asset and other underwriting criteria into consideration. Should a borrower's application for the loan fund be approved, they may receive:

- short term assistance in the form of a fixed, lump sum amount to help resolve their mortgage delinquency, or
- long term, ongoing assistance for a maximum of 18 months assistance, during which a borrower is expected to contribute toward their regular monthly mortgage payment, based on an assessment of their monthly income and ability to pay other monthly housing costs.

Assistance will be in the form of a subordinate, amortizing, low interest mortgage, whose proceeds will be paid directly to a mortgage servicer on the borrower's behalf. The amount of the subordinate mortgage will include closing and other necessary fees and will not exceed more than 18 months of the regular monthly mortgage amount paid for principal, interest, taxes and insurance, but can include funds to bring current delinquent escrows, taxes and insurance. This subordinated mortgage will be secured and recorded locally as a lien against the mortgaged property. The term of the subordinate mortgage will not exceed 15 years.

Repayment of the subordinate mortgage begins once the term of assistance ends and will be structured based on an assessment of the borrower's ability to pay, while maintaining their monthly housing costs. The term of and approval for assistance may be modified at the discretion of the Agency. Modification of the assistance may be based on: a change in the borrower's financial or employment situation, the recommendation of the local counseling agency, a borrower no longer qualifying for assistance, or other criteria determined necessary to the operation of the program.

There are no income, outstanding first mortgage amount, or appraisal value requirements for a borrower's participation in this pilot and loan fund program, other than the requirement that the assistance is only contributable toward mortgages secured by eligible residential real property located in select North Carolina counties.

A key criterion for participation is that the borrower, once brought current with the second mortgage assistance, must demonstrate an ability to resume timely, regular monthly mortgage payments.

Support for Foreclosure Prevention and Mitigation Efforts

The support for foreclosure mitigation and counseling agency services provided in conjunction with the loan fund may involve a "fee for service" structure where counseling agencies are reimbursed for mortgage default and foreclosure prevention-related counseling services, or it may involve the funding of individual positions to increase organizational capacity.

Funding may also be used to support the training of counseling staff from agencies conducting the screening of potential loan fund borrowers and may later support training statewide, with the goal of enhancing capacity of counseling agencies to employ successful foreclosure mitigation efforts.

Public Comments

Agency staff will receive public comments on proposed operating procedures and program structure for the North Carolina Home Protection Pilot Program and Loan Fund from October 15, 2004 through November 15, 2004.

Public comments can be submitted to Keir Morton at the North Carolina Housing Finance Agency in several ways:

- Written comments via postal mail:
Keir Morton, Housing Policy Analyst
North Carolina Housing Finance Agency
P.O. Box 28066, Raleigh, NC 27611-8066
- Written comments via facsimile:
Keir Morton, Housing Policy Analyst
North Carolina Housing Finance Agency
Fax Number 919.877.5599
- Written comments via electronic mail:
Keir Morton, Housing Policy Analyst
Email Address kmorton@nchfa.com.

Public Hearing

Oral and public comments related to the proposed operating procedures and program structure of the North Carolina Home Protection Pilot Program and Loan Fund will be also received in person at a Public Hearing, on November 3, 2004 from 1:00 p.m. until 3:00 p.m., in the Board Room of the North Carolina Housing Finance Agency, located at 3508 Bush Street, Raleigh, North Carolina, 27609.

For directions to the Agency, call 919.877.5634 or send an email to kmorton@nchfa.com.

The Agency, its Board of Directors and selected local counseling agencies have the ability to make decisions regarding approval, general program operations, and procedures based on the public policy of this pilot and loan fund program.

End.

**NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION**

FEDERAL LAW RULE CERTIFICATION

September 17, 2004

This certification is made in accordance with N.C.G.S. 150B-21(f).

On February 17, 2004, in 69 FR 7351-7366, OSHA published a final rule, effective March 18, 2004, to amend its Commercial Diving Operations (CDO) Standards allowing employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO Standards. The final rule applies only when these employees engage in recreational diving instruction and diving-guide duties; use an open circuit, a semi-closed-circuit, or a closed circuit self-contained underwater breathing apparatus supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture.

On June 8, 2004, in 69 FR 31880-31882, OSHA published a final rule / technical amendments, effective June 8, 2004, to its Mechanical Power – Transmission Apparatus; Mechanical Power Presses; Telecommunications; Hydrogen Standards. These standards contain typographical, cross-reference and other reference errors. The first correction deletes two references to a non-existing table in the Mechanical Power-Transmission Apparatus Standard; the second, corrects typographical errors in the Mechanical Power Presses Standard; the third, corrects a cross-reference to the Telecommunications Standard; and the fourth, corrects a reference to a table contained in the Hazardous Materials Standard for Hydrogen, cited at 29 CFR 1910.219 and 29 CFR 1926.307.

On August 4, 2004, in 69 FR 46986-46994, OSHA published a final rule, effective September 3, 2004, approving an additional quantitative fit testing protocol, the controlled negative pressure (CNP) REDON fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard, cited at 29 CFR 1910.134.

The attached amendment of 13 NCAC 07F .0101 is required by 29 CFR 1952.23(a)(2) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted pursuant to 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), the effective date of this action is September 17, 2004.

Allen McNeely, Deputy Commissioner / Director
North Carolina Department of Labor
Occupational Safety and Health Division

A. John Hoomani, Acting General Counsel
North Carolina Department of Labor
Acting Agency Rule-Making Coordinator

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OCCUPATIONAL SAFETY AND HEALTH DIVISION**

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Allen McNeely, Deputy Commissioner / Director
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Acting Agency Rule-Making Coordinator

**The 2005 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. 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, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

No county or project will be awarded tax credits for new construction exceeding \$1.5 million 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.

The Agency may allocate 2005 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 U.S. Department of Housing and Urban Development (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 or the state receives credits from the national pool, 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(D)(1) may be exceeded in order to completely fund a project request.

A. 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.

B. NEW CONSTRUCTION SET-ASIDES

1. HOPE VI PROJECTS

- (a) The Agency will make awards of 2005 tax credits and forward commitments of 2006 tax credits to HOPE VI projects that apply in the 2005 cycle. The total amount of 2005 tax credits awarded to such projects will not exceed \$3 million. The Agency will make forward commitments of 2006 tax credits for the remaining HOPE VI project applications, provided such proposals meet all Plan requirements. HOPE VI applications submitted in 2006 will be for forward commitments from the 2007 ceiling.
- (b) The Agency may set conditions for the awards and forward commitments that exceed those described in the Plan. (Examples include timing of phases and making improvements to surrounding property.)
- (c) Public housing authorities (PHAs) involved in more than one application will be required to indicate their priorities.
- (d) The Agency will determine what qualifies as a HOPE VI project under this Section II(B)(1). The relevant factors for this determination include, but are not limited to:
 - (i) the proposal's need for mixed-finance approval from HUD,
 - (ii) participation by entities involved in the overall HOPE VI effort, and
 - (iii) proximity to the site of former public housing.

2. OTHER NEW CONSTRUCTION PROJECTS

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: 20% | CENTRAL: 35% | METRO: 20% | EAST: 25% |
|-----------|--------------|------------|-----------|

| 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:

- (a) allocated to one or more of the following i) the next highest scoring new construction application(s) statewide, ii) awards made outside the normal process as described above, or iii) to one or more rehabilitation applications that meet the requirements of Section IV(H), and/or
- (b) carried forward and applied to the next year's federal tax credit ceiling.

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 (nonprofits) 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 under subsection (C)(1) above, 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 under subsection (C)(2) above, an application must meet the requirements of subsection (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. LIMITATION OF AWARDS TO PRINCIPALS

- 1. 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 rehabilitation projects under Section II(A). Rehabilitation awards will count against the fifteen percent (15%) total.
- 2. Each PHA will be limited to two (2) tax credit awards per annual award cycle, including all HOPE VI activity. Forward commitments will be counted in the following year's cycle (thus one PHA may have four awards over two years). This limitation:
 - (a) includes entities that are related to the PHA, including (but not limited to) those with an overlap between the board and/or staff of the PHA,
 - (b) applies where the PHA or related entity meets the definition of Principal or either of the two will have a right of first refusal, and

- (c) does not apply where the only involvement of the PHA or related entity is as a lender or a provider of project-based rental assistance.

The application of this Section II(D)(2) on project proposals, entities and their participation will be determined by the Agency.

E. COUNTY INCOME DESIGNATIONS

Pursuant to N.C.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:

- County median income
- Poverty rate
- Percent of population in rural areas
- Regional growth patterns
- 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 |
| Catawba | Buncombe | Moore | Ashe | Halifax | Pender |
| Chatham | Burke | Nash | Avery | | Perquimans |
| | Caldwell | | Beaufort | Hertford | Richmond |
| Durham | Carteret | Onslow | Bertie | Hoke | Robeson |
| Forsyth | | Person | Bladen | Hyde | Rockingham |
| Guilford | Cleveland | Pitt | Camden | Jackson | Rutherford |
| Iredell | Craven | Polk | Caswell | Jones | Sampson |
| Johnston | Cumberland | Randolph | Cherokee | Lenoir | Scotland |
| Mecklenburg | Dare | Rowan | Chowan | Macon | Surry |
| New Hanover | Davidson | Stanly | Clay | Madison | Swain |
| Orange | Davie | Stokes | Columbus | Martin | Tyrrell |
| | Franklin | Transylvania | Currituck | McDowell | Vance |
| Union | Gaston | Watauga | Duplin | Mitchell | Warren |
| Wake | Granville | Wayne | Edgecombe | Montgomery | Washington |
| | Harnett | Wilson | Gates | Northampton | Wilkes |
| | Haywood | Yadkin | | | Yancey |
| | Henderson | | | | |

III. DEADLINES AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2005 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**.

- | | |
|-------------|---|
| January 7 | Deadline for submission of preliminary applications (12:00 noon, no exceptions) |
| February 25 | Market analysts will mail studies to the Agency and applicants |
| March 11 | Notification of final site scores |
| March 18 | Deadline for market-related project revisions |

- March 25 Market analysts will mail comments on revisions to the Agency and applicants
- April 15 Notification of market scores and initial evaluation of rehabilitation projects
- May 6 Deadline for full applications (12:00 noon, no exceptions)
- August Notification of final reservations

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 \$5,260 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,060 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 \$1,060 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 (such as ownership entity information) 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.

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 515 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 and evaluated using the points and criteria 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 200 points to be considered for award and funding. Projects applying under Section II(B)(1) (the HOPE VI set-aside) must receive 220 points. The minimum point threshold for tax-exempt bond financing applications is 160 points. 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 2005 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).

(i) 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.

(ii) SURROUNDING LAND USES AND AMENITIES (MAXIMUM 65 POINTS)

- Suitability of surrounding development
- Land use pattern is residential in character (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.

(iii) SITE SUITABILITY (MAXIMUM 35 POINTS)

- Adequate traffic controls (stop lights, speed limits, 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.

- Visibility of buildings and/or location of project sign(s) in relation to traffic corridors.

(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. The documentation of site control must include a plot plan.
- 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 55 POINTS)

1. FEDERAL RENTAL ASSISTANCE (MAXIMUM 10 POINTS)

- (a) A maximum of ten (10) points will be awarded for a firm commitment of federal project-based rental subsidies for at least twenty percent (20%) of total project units. Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency.

- (b) Applicants must include a written agreement between the owner and a 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 RD.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 30 POINTS)

- (a) Only loans from the following sources will be considered:
- the local PHA,
 - Community Development Block Grant (CDBG) Small Cities program funds (for on-site improvements only),
 - HUD Section 108, 202 or 811,
 - Federal Home Loan Bank Affordable Housing Program,
 - local government housing development funds and
 - 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, comply with the requirements of Section VI(B)(6)(b), and either:

- (i) have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%) or
- (ii) have a term of at least forty (40) years, an interest rate of the long-term applicable federal rate (AFR) and a source that is a "below market federal loan" under Section 42(i)(2) of the Code.
- (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 (B)(2)(c) above are mutually exclusive.

- (e) 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, 2005. Commitment of other local government funds may be delayed 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.
- (The two options for point scoring in this subsection (3)(a) above are mutually exclusive.)
- (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.
- (The two options for point scoring in this subsection (3)(b) above are mutually exclusive.)
- (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.
- (e) Ten (10) points will be awarded to applications for new construction tax exempt bond projects that 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 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.

- (a) The point structure in **Chart B** will apply to the following:
- detached single family or duplex developments with 25 units or less,
 - 100% severe mobility impairment housing,
 - HOPE VI projects,
 - unique downtown circumstances and
 - 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.
- (b) In addition to land and reserves, the following will be subtracted from total replacement costs before the calculation in this Section IV(C) is made (each as determined by the Agency):
- equity raised from historic preservation tax credits,
 - water and sewer tap fees and impact fees (provided that the applicant has included documentation from the local government verifying the amount of fees required) and
 - the costs directly associated with a Community Service Facility.
- The Agency may waive all negative points for projects that include residential building(s) with both steel and concrete construction and at least four (4) stories of housing (adaptive re-use projects are not eligible for this waiver).

(c) Chart A and Chart B:

| CHART A | | | |
|----------|----|-----------------|--------|
| Per Unit | OR | Per Net Sq. Ft. | Points |
| \$78,000 | | \$78 | (-4) |
| \$81,000 | | \$81 | (-6) |
| \$84,000 | | \$84 | (-8) |
| \$87,000 | | \$87 | (-10) |
| \$90,000 | | \$90 | (-15) |
| \$93,000 | | \$93 | (-20) |
| \$96,000 | | \$96 | (-30) |
| \$99,000 | | \$99 | (-40) |

| CHART B | | | |
|-----------|----|-----------------|--------|
| Per Unit | OR | Per Net Sq. Ft. | Points |
| \$90,000 | | \$90 | (-4) |
| \$93,000 | | \$93 | (-6) |
| \$96,000 | | \$96 | (-8) |
| \$99,000 | | \$99 | (-10) |
| \$102,000 | | \$102 | (-15) |
| \$105,000 | | \$105 | (-20) |
| \$108,000 | | \$108 | (-30) |
| \$111,000 | | \$111 | (-40) |

Note: The Agency may compare what is represented in 2005 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 2005 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, 2005. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:
- be identified in the preliminary application,
 - become a general partner or managing member of the ownership entity, and
 - 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 (refer to the list in **Appendix C**). 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;
- (f) interferes with a tax credit application for which it is not an owner or Principal at public hearing or other official meeting; or

- (g) is not in good standing with the Agency.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) 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 IV(E) for proposals that reduce low-income and minority concentration, and subsection IV(E)(3) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines.

F. SPECIAL CRITERIA AND TIEBREAKERS (MAXIMUM 30 POINTS)

1. HUD AND RD PROGRAMS (MAXIMUM 15 POINTS)

- (a) Fifteen (15) points will be awarded to projects that have an obligation of funds from RD Section 515, the HUD 202 or 811 programs, including project based rental assistance appropriate for the project.
- (b) Five (5) points will be awarded to applications that (i) include a written commitment under the RD Section 538 program and (ii) can demonstrate that the guarantee will benefit the project.

2. COMMUNITY REVITALIZATION PLANS (MAXIMUM 10 POINTS)

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 project is in a Qualified Census Tract and/or the CRP is primarily focused on an existing residential neighborhood;
- (c) the project is consistent with and contributes to the CRP; and
- (d) meets one of the following sets of criteria: (i) the CRP was officially adopted by a local government after January 1, 1998, there is a specific timetable and funding commitment; and some of the progress or improvement described in the CRP is visibly evident, (ii) the activities described in the CRP are well underway, with at least some having been completed, or (iii) the proposed project includes a Community Service Facility.

3. UNITS FOR THE MOBILITY IMPAIRED (MAXIMUM 5 POINTS)

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. TARGETING PLANS

All projects⁰ 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. Project owners 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 description of how the development will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) 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.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include:
 - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
 - (ii) The referral and screening process that will be used to refer tenants to the development, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the development.
 - (iii) A communications plan between the development management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the development and the local lead agency for the duration of the compliance period.
- (d) 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).
- (e) Agreement that for a period of ninety (90) days after the initial rent-up period begins, the number of units specified in the application for persons with disabilities will be held vacant other than for such population(s).
- (f) 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 the application.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) 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 determines that they are not feasible. A detailed description of the elements to be addressed in the Targeting Plan is included in **Appendix D**. Applicants will agree to complete the requirements of this Section IV(F)(4) and **Appendix D** by the earlier of July 29, 2006 or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This Section IV(F)(4) does not apply to tax-exempt bond applications.

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.

1. A maximum of eighty (80) points will be awarded for new construction projects based on the following criteria.

- (a) Site plan considerations: A maximum of fifteen (15) points will be given for projects which
 - Propose an attractive, scattered building layout focusing on visual appeal and privacy;
 - Propose exterior amenities, including the following: resident garden plots; playground; tot lot; basketball court; volleyball court; walking trails; fitness stations; gazebo/arbor; picnic area with tables/grilles; horseshoe pit; shuffleboard; car care area with vacuum; fenced ball field; swimming pool; covered drive-through at entry; flag pole; sitting areas; covered drop off at entry; large fountain; tennis court; irrigated lawns; garages/covered parking; bike racks; bus shelter; creating accessible walks linking buildings to each other, to common areas and to parking; having large open spaces for recreational activities, having a well-designed entry to the site with attractive signage, lighting and landscaping
 - Propose interior amenities, including the following: screened porch; sunroom with chairs; exercise room; exam room; reading room/library; game/craft room; resident computer center; TV room; beauty salon; vending area; storage for elderly projects; a Community Service Facility; providing high-speed Internet access (involves both a data connection in the living area of each unit that is separate from the cable/telephone connection and support from a project-wide network or a functional equivalent).

Other amenities may be used, but will require Agency approval prior to full application. In order to receive points, the items listed above must be clearly indicated on the site drawings.

- (b) Building and floor plan design: A maximum of forty-five (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 provide 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.

- (c) Construction characteristics: A maximum of twenty (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.
2. 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.
3. The minimum threshold requirements for design are found in **Appendix B** and must be used for all projects receiving tax credits and/or RPP funding. These minimum requirements include, but are not limited to, standards in the following areas: on-site postal and laundry facilities; community/office space; on-site parking and refuse collection areas; exterior and interior building design; plumbing and electrical provisions; heating, ventilating and air conditioning provisions; sitework; bedrooms, bathrooms and kitchens; provisions for all elderly housing; provisions for sight and hearing impaired residents; Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements; and additional architectural requirements for renovation of existing apartment projects.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. THRESHOLD REQUIREMENTS

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

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 1986,
- (c) require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs, and
- (e) not be feasible using tax exempt bonds (as determined by the Agency).

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**.

2. EVALUATION CRITERIA

The Agency will evaluate applications based on the following criteria, which are listed in order of importance. Each one 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. For purposes of making awards, the Agency will not consider subsections (e) through (i) below if the outcome is determined by the criteria in subsections (a) through (d).

- (a) 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.
- (b) 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).
- (c) Applications will have a reduced likelihood of being awarded credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above three criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent i) conversion of units to market rate rents or ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) 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.
- (g) Applications will have a reduced likelihood of being awarded credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) The Agency will give preference to applications based on the quality of and degree of effort proposed in the temporary and permanent relocation plans.
- (i) 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 failure to comply with an Agency request under subsection (A)(1) above or 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 the lesser of its appraised market value or the purchase price. 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:
 - (a) Projects applying for tax credits only will be underwritten with rents escalating at three percent (3%) and operating expenses escalating at four percent (4%).

- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. Projects with less than forty (40) units must also demonstrate \$150 per unit per year of net cash flow for the first fifteen (15) years. This does not apply to projects with rental assistance provided through RD.
- (c) RPP loans will be underwritten using a twenty (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.
- (d) 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:

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

4. Reserves:

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount must 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 must 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 date. 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.

- (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 ten (10) years and meets 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 must clearly state the term of the permanent loan is at least eighteen (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 eighteen (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)(e), 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 eighteen (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 64 units | 15% |
| 65-112 units | 12.5% |
| 113 units plus | 10% |

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: 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 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 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.
14. Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the Project Development Costs page. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.

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 a date to be determined by the Agency. (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. Returned credits may include credits previously allocated to project that fails to meet the 10% test under Section 42(b)(1)(E)(ii) of the Code after close of calendar year in which allocation was made. 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 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.

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 year after the tax credits are allocated. 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 N.C.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 N.C.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 N.C.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.

Community Service Facility: Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

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 (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all 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 (4) all affiliates of such persons or entities in clause (3) 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**. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rules cited as 10A NCAC 13B .3707, .3905, .4511 and 13O .0102.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: December 10, 2004

Time: 9:00 a.m.

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

Reason for Proposed Action:

The NC Medical Care Commission is proposing to amend rules found in 10A NCAC 13B. This Subchapter pertains to the Licensing of Hospitals. The specifics of this rule-making action are:

(a) The amendment of 10A NCAC 13B .3707 to allow treatment at the Hospital of patients who are under the continuing care of an out-of-state physician but are temporarily staying in North Carolina, by allowing Hospital employees to follow such physician orders after verification of the orders.

(b) The amendment of 10A NCAC 13B .3905 and 10A NCAC 13B .4511 to correct references in the rules to another rule in the Subchapter.

The NC Medical Care Commission is proposing to amend rules found in 10A NCAC 13O. This Subchapter pertains to the Healthcare Personnel Registry. The specifics of this rule-making action are:

(a) The amendment of 10A NCAC 13O .0102 to require the immediate reporting to the Department of all allegations against health care personnel, including injuries of an unknown source, within 24 hours of being aware of the allegation.

Procedure by which a person can object to the agency on a proposed rule: *An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.*

Written comments may be submitted to: *Mercidee Benton, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701, phone (919)855-3750, fax (919)733-2757, email mercidee.benton@ncmail.net.*

Comment period ends: December 14, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .3000 - GENERAL INFORMATION

10A NCAC 13B .3707 MEDICAL ORDERS

(a) No medication or treatment shall be administered or discontinued except in response to the order of a member of the medical staff in accordance with established rules and ~~regulations.~~ regulations and as provided in Paragraph (f) of this Rule.

(b) Such orders shall be dated and recorded directly in the patient chart or in a computer or data processing system which provides a hard copy printout of the order for the patient chart. A method shall be established to safeguard against fraudulent recordings.

(c) All orders for medication or treatment shall be authenticated according to hospital policies. The order shall be taken by personnel qualified by medical staff rules and shall include the date, time, and name of persons who gave the order, and the full signature of the person taking the order.

(d) The names of drugs shall be recorded in full and not abbreviated except where approved by the medical staff.

(e) The medical staff shall establish a written policy in conjunction with the pharmacy committee or its equivalent for all medications not specifically prescribed as to time or number

of doses to be automatically stopped after a reasonable time limit, but no more than 14 days. The prescriber shall be notified according to established policies and procedures at least 24 hours before an order is automatically stopped.

(f) For patients who are under the continuing care of an out-of-state physician but are temporarily located in North Carolina, a hospital may process the out-of-state physician's prescriptions or orders for diagnostic or therapeutic studies which maintain and support the patient's continued program of care, where the authenticity and currency of the prescriptions or orders can be verified by the physician who prescribed or ordered the treatment requested by the patient, and where the hospital verifies that the out-of-state physician is licensed to prescribe or order the treatment.

Authority G.S. 131E-79.

10A NCAC 13B .3905 PATIENT MEDICAL RECORDS

(a) Hospital management shall maintain medical records for each patient treated or examined in the facility.

(b) The medical record or medical record system shall provide data for each episode of care and treatment rendered by the facility.

(c) Where the medical record does not combine all episodes of inpatient, outpatient and emergency care, the medical records system shall:

- (1) assemble, upon request of the physician, any or all divergently located components of the medical record when a patient is admitted to the facility or appears for outpatient or clinic services; or
- (2) require placing copies of pertinent portions of each inpatient's medical record, such as the discharge resume, the operative note and the pathology report in the outpatient or combined outpatient emergency unit record file as directed by the medical staff.

(d) The manager of medical records shall provide that:

- (1) each patient's medical record is complete, readily accessible and available to the professional staff concerned with the care and treatment of the patient;
- (2) all significant clinical information pertaining to a patient is incorporated in his medical record;
- (3) all entries in the record are dated and authenticated by the person making the entry;
- (4) symbols and abbreviations are used only when they have been approved by the medical staff and when there exists a legend to explain them;
- (5) verbal orders include the date and signature of the person recording them. They shall be given and authenticated in accordance with the provisions of Rule ~~3707(e)~~ 3707(c) of this Subchapter; and
- (6) records of patients discharged are completed within 30 days following discharge or

disciplinary action is initiated as defined in the medical staff bylaws.

Authority G.S. 131E-79.

SECTION .4000 - OUTPATIENT SERVICES

10A NCAC 13B .4511 MEDICATION ADMINISTRATION

(a) A facility shall establish and maintain policies and procedures governing the administration of medications which shall be enforced and implemented by administration and staff. Policies and procedures shall include, but shall not necessarily be limited to:

- (1) accountability of controlled substances as defined by the G.S. 90, Article 5; and
- (2) dispensing and administering behavior modifying drugs, and psychotherapeutic agents; insulin; intravenous fluids and medications; cardiovascular drugs; antibiotics; and cytotoxic and related agents.

(b) All medications and treatments shall be administered and discontinued in accordance with signed medical staff orders which are recorded in the patient's medical record.

(c) The categories of staff that are privileged to administer medications shall be delineated by the operational policies of the facility. These policies shall be in agreement with current rules of North Carolina Occupational Boards for each category of staff.

(d) Medications shall be scheduled and administered according to the established policies of the facility.

(e) Variances to the medication administration policy shall be reviewed and evaluated by the nurse executive or her designee.

(f) The person administering medications shall identify each patient in accordance with the facility's policies and procedures prior to administering any medication.

(g) Medication administered to a patient shall be recorded in the patient's medication administration record immediately after administration in accordance with the facility's policies and procedures.

(h) Omission of medication and the reason for the omission shall be indicated in the patient's medical record.

(i) The person administering medications which are ordered to be given as needed (PRN) shall justify the need for the same in the patient's medical record.

(j) Medication administration records shall provide identification of the drug and strength of drug, quantity of drug administered, route administered, name and title of person administering the medication, and time and date of administration.

(k) Self-administration of medications shall be permitted only if prescribed by the medical staff. Directions must be printed on the container.

(l) The administration of one patient's medications to another patient is prohibited except in the case of an emergency. In the event of such as emergency, steps shall be taken by a pharmacist to ensure that the borrowed medications shall be replaced and so documented.

(m) Verbal orders shall be countersigned in accordance with Rule ~~3707(e)~~ 3707(c) of this Subchapter.

Authority G.S. 131E-79.

**SUBCHAPTER 130 – HEALTHCARE
PERSONNEL REGISTRY**

**SECTION .0100 - HEALTH CARE
PERSONNEL REGISTRY**

**10A NCAC 130 .0102 INVESTIGATING AND
REPORTING HEALTH CARE PERSONNEL**

~~(a) The health care facility shall investigate and document all allegations of resident abuse or neglect, misappropriation of resident or facility property, diversion of drugs belonging to a resident or facility, and fraud against a resident or facility, within five working days of the date the facility becomes aware of the alleged incident. The facility shall take whatever steps are necessary to prevent further acts of abuse, neglect, misappropriation of property, drug diversion, or fraud while the investigation is in progress.~~

~~(b) Upon completion of the investigation, the health care facility shall ensure that all allegations which appear to a reasonable person to be related to any act of resident abuse or neglect, misappropriation of resident or facility property, diversion of drugs belonging to a resident or facility, and fraud against a resident or facility are reported immediately to the Division of Facility Services. The report shall be printed or typed and mailed or faxed to the Division. The report shall include all information relevant to the investigation.~~

The reporting by health care facilities to the Department of all allegations against health care personnel as defined in G.S. 131E-256 (a)(1), including injuries of unknown source, shall be done within 24 hours of the health care facility becoming aware of the allegation. The results of the health care facility's investigation shall be submitted to the Department in accordance with G.S. 131E-256(g).

Authority G.S. 131E-256.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Home Inspector Licensure Board intends to amend the rules cited as 11 NCAC 08 .1101, .1103, .1105-.1115, .1203-.1204.

Proposed Effective Date: February 1, 2005

Public Hearing:

Date: November 17, 2004

Time: 9:00 a.m.

Location: 322 Chapanoke Rd., Suite 200, Raleigh, NC

Reason for Proposed Action: *The amendments to these Rules are made to define the term "inspect", and to make other clarifying changes.*

Procedure by which a person can object to the agency on a proposed rule: *The Home Inspector Licensure Board/NC Department of Insurance will accept written objections to the amendments of these Rules until the expiration of the comment period on December 14, 2004.*

Written comments may be submitted to: *Tammy Parker – N.C. Home Inspector Licensure Board, c/o N.C. Department of Insurance, 322 Chapanoke Rd., Suite 200, Raleigh, NC 27603, phone (919) 662-4480 X 2, and email tparker@ncdoi.net.*

Comment period ends: December 14, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 08 – ENGINEERING AND BUILDING
CODES DIVISION**

**SECTION .1100 - N.C. HOME INSPECTOR STANDARDS
OF PRACTICE AND CODE OF ETHICS**

11 NCAC 08 .1101 DEFINITIONS

The following definitions apply to this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
- (2) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (3) "Component" means a readily accessible and observable aspect of a system, such as a floor,

- or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.
- (4) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (5) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- (6) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.
- (7) "Describe" means report in writing a system or component by its type, or other ~~observed~~ inspected characteristics, to distinguish it from other components used for the same purpose.
- (8) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.
- (9) "Enter" means to go into an area to ~~observe~~ inspect all visible components.
- (10) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.
- (11) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (12) "Inspect" means the act of making a visual examination.
- ~~(12)~~(13) "Installed" means attached or connected such that ~~the installed~~ said item requires tools for removal.
- ~~(13)~~(14) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.
- ~~(14)~~ "Observe" ~~"means the act of making a visual examination.~~
- (15) "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water.
- (16) "On-site water supply quantity" means the rate of flow of on-site well water.
- (17) "Operate" means to cause systems or equipment to function.
- (18) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (19) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (20) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.
- (21) ~~"Representative number" means for multiple identical components such as windows and electrical outlets one such component per room. For multiple identical exterior components one such component on each side of the building.~~ means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building.
- (22) "Roof drainage systems" means gutters, downspouts, leaders, splashblocks, and similar components used to carry water off a roof and away from a building.
- (23) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a ~~home owner~~ homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (24) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices.
- (25) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).
- (26) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
- (27) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
- (28) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Authority G.S. 143-151.49.

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with a ~~better~~an understanding of the property conditions, as ~~observed~~inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
 - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
 - (B) Describe what services shall be provided and their cost; and
 - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
- (2) ~~Observe~~Inspect readily visible and readily accessible installed systems and components listed in this Section; and
- (3) Submit a written report to the client that shall:
 - (A) Describe those systems and components specified to be described in Rules .1106 through .1115 of this Section;
 - (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
 - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (D) State whether the condition reported requires repair or subsequent observation, or ~~appears to warrant~~warrants further investigation by a specialist; and
 - (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

(d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate

section labeled "Summary" that includes any system or component that:

- (1) does not function as intended or adversely affects the habitability of the dwelling; or
- (2) ~~appears to warrant~~warrants further investigation by a specialist or requires subsequent observation.

This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function, efficiency, or safety of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

Authority G.S. 143-151.49.

11 NCAC 08 .1105 GENERAL EXCLUSIONS

(a) Home inspectors are not required to report on:

- (1) Life expectancy of any component or system;
- (2) The causes of the need for a repair;
- (3) The methods, materials, and costs of corrections;
- (4) The suitability of the property for any specialized use;
- (5) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;
- (6) The market value of the property or its marketability;
- (7) The advisability or inadvisability of purchase of the property;
- (8) Any component or system that was not ~~observed~~inspected;
- (9) The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
- (10) Cosmetic damage, underground items, or items not permanently installed.

(b) Home inspectors are not required to:

- (1) Offer warranties or guarantees of any kind;
- (2) Calculate the strength, adequacy, or efficiency of any system or component;
- (3) Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
- (4) Operate any system or component that is shut down or otherwise inoperable;
- (5) Operate any system or component that does not respond to normal operating controls;
- (6) Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- (7) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited

- (8) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
- (9) Predict future condition, including but not limited to failure of components;
- (10) Project operating costs of components;
- (11) Evaluate acoustical characteristics of any system or component;
- (12) ~~Observe~~—Inspect special equipment or accessories that are not listed as components to be ~~observed~~ inspected in this Section; or
- (13) Disturb insulation, except as required in Rule .1114 of this Section.

(c) Home inspectors shall not:

- (1) Offer or perform any act or service contrary to law; or
- (2) Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the home inspector holds a valid occupational license, in which case the home inspector shall inform the client that the home inspector is so licensed, and therefore qualified to go beyond this Section and perform additional inspections beyond those within the scope of the basic inspection.

Authority G.S. 143-151.49.

11 NCAC 08 .1106 STRUCTURAL COMPONENTS

(a) The home inspector shall ~~observe~~ inspect structural components including:

- (1) Foundation;
- (2) Floors;
- (3) Walls;
- (4) Columns or piers;
- (5) Ceilings; and
- (6) Roofs.

(b) The home inspector shall describe the type of:

- (1) Foundation;
- (2) Floor structure;
- (3) Wall structure;
- (4) Columns or piers;
- (5) Ceiling structure; and
- (6) Roof structure.

(c) The home inspector shall:

- (1) Probe structural components where deterioration is suspected;
- (2) Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;
- (3) Report the methods used to ~~observe~~—inspect underfloor crawl spaces and attics; and

- (4) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

Authority G.S. 143-151.49.

11 NCAC 08 .1107 EXTERIOR

(a) The home inspector shall ~~observe~~—inspect:

- (1) Wall cladding, flashings, and trim;
- (2) Entryway doors and a representative number or windows;
- (3) Garage door operators;
- (4) Decks, balconies, stoops, steps, areaways, porches and applicable railings;
- (5) Eaves, soffits, and fascias; and
- (6) Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

(b) The home inspector shall:

- (1) Describe wall cladding materials;
- (2) Operate all entryway doors and a representative number of windows;
- (3) Operate garage doors manually or by using permanently installed controls for any garage door operator;
- (4) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
- (5) Probe exterior wood components where deterioration is suspected.

(c) The home inspector is not required to ~~observe~~—inspect:

- (1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
- (2) Fences;
- (3) ~~Presence~~—For the presence of safety glazing in doors and windows;
- (4) Garage door operator remote control transmitters;
- (5) Geological conditions;
- (6) Soil conditions;
- (7) Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities);
- (8) Detached buildings or structures; or
- (9) ~~Presence~~—For the presence or condition of buried fuel storage tanks.

Authority G.S. 143-151.49.

11 NCAC 08 .1108 ROOFING

(a) The home inspector shall ~~observe~~—inspect:

- (1) Roof coverings;
- (2) Roof drainage systems;
- (3) Flashings;

- (4) Skylights, chimneys, and roof penetrations; and
- (5) Signs of leaks or abnormal condensation on building components.
- (b) The home inspector shall:
 - (1) Describe the type of roof covering materials; and
 - (2) Report the methods used to ~~observe~~ inspect the roofing.
- (c) The home inspector is not required to:
 - (1) Walk on the roofing; or
 - (2) ~~Observe-Inspect~~ attached accessories including but not limited to solar systems, antennae, and lightning arrestors.

Authority G.S. 143-151.49.

11 NCAC 08 .1109 PLUMBING

- (a) The home inspector shall ~~observe-inspect~~:
 - (1) Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
 - (2) Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
 - (3) Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents;
 - (4) Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and
 - (5) Sump pumps.
- (b) The home inspector shall describe:
 - (1) Water supply and distribution piping materials;
 - (2) Drain, waste, and vent piping materials;
 - (3) Water heating equipment; and
 - (4) ~~Location of~~ The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
 - (1) State the effectiveness of anti-siphon devices;
 - (2) Determine whether water supply and waste disposal systems are public or private;
 - (3) Operate automatic safety controls;
 - (4) Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 - (5) ~~Observe-Inspect~~:
 - (A) Water conditioning systems;
 - (B) Fire and lawn sprinkler systems;
 - (C) On-site water supply quantity and quality;

- (D) On-site waste disposal systems;
- (E) Foundation irrigation systems;
- (F) Spas, except as to functional flow and functional drainage;
- (G) Swimming pools;
- (H) Solar water heating equipment; or
- (6) ~~Observe-Inspect~~ the system for proper sizing, design, or use of proper materials.

Authority G.S. 143-151.49.

11 NCAC 08 .1110 ELECTRICAL

- (a) The home inspector shall ~~observe-inspect~~:
 - (1) Service entrance conductors;
 - (2) Service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
 - (3) Amperage and voltage ratings of the service;
 - (4) Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages;
 - (5) The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
 - (6) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
 - (7) The operation of ground fault circuit interrupters; and
 - (8) Smoke detectors.
- (b) The home inspector shall describe:
 - (1) Service amperage and voltage;
 - (2) Service entry conductor materials;
 - (3) ~~Service~~ The service type as being overhead or underground; and
 - (4) ~~Location~~ The location of main and distribution panels.
- (c) The home inspector shall report the presence of any readily accessible single strand ~~any observed~~ aluminum branch circuit wiring.
- (d) The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central system.
- (e) The home inspector is not required to:
 - (1) Insert any tool, probe, or testing device inside the panels;
 - (2) Test or operate any overcurrent device except ground fault circuit interrupters;
 - (3) Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
 - (4) ~~Observe-Inspect~~:
 - (A) Low voltage systems;
 - (B) Security system devices, heat detectors, or carbon monoxide detectors;

- (C) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or
- (D) Built-in vacuum equipment.

Authority G.S. 143-151.49.

11 NCAC 08 .1111 HEATING

- (a) The home inspector shall ~~observe~~-inspect permanently installed heating systems including:
 - (1) Heating equipment;
 - (2) Normal operating controls;
 - (3) Automatic safety controls;
 - (4) Chimneys, flues, and vents, where readily visible;
 - (5) Solid fuel heating devices;
 - (6) Heat distribution systems including fans, pumps, ducts and piping, with supports, insulation, air filters, registers, radiators, fan coil units, convectors; and
 - (7) The presence of an installed heat source in each room.
- (b) The home inspector shall describe:
 - (1) Energy source; and
 - (2) Heating equipment and distribution type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
 - (1) Operate heating systems when weather conditions or other circumstances may cause equipment damage;
 - (2) Operate automatic safety controls;
 - (3) Ignite or extinguish solid fuel fires; or
 - (4) ~~Observe-Inspect~~:
 - (A) The interior of flues;
 - (B) Fireplace insert flue connections;
 - (C) Humidifiers;
 - (D) Electronic air filters; or
 - (E) The uniformity or adequacy of heat supply to the various rooms.

Authority G.S. 143-151.49.

11 NCAC 08 .1112 AIR CONDITIONING

- (a) The home inspector shall ~~observe~~-inspect:
 - (1) Central air conditioning and through-the-wall installed cooling systems including:
 - (A) Cooling and air handling equipment; and
 - (B) Normal operating controls.
 - (2) Distribution systems including:
 - (A) Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan-coil units; and

- (B) The presence of an installed cooling source in each room.
- (b) The home inspector shall describe:
 - (1) Energy sources; and
 - (2) Cooling equipment type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
 - (1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
 - (2) ~~Observe-Inspect~~ window air conditioners; or
 - (3) ~~Observe-Inspect~~ the uniformity or adequacy of cool-air supply to the various rooms.

Authority G.S. 143-151.49.

11 NCAC 08 .1113 INTERIORS

- (a) The home inspector shall ~~observe~~-inspect:
 - (1) Walls, ceiling, and floors;
 - (2) Steps, stairways, balconies, and railings;
 - (3) Counters and a representative number of built-in cabinets; and
 - (4) A representative number of doors and windows.
- (b) The home inspector shall:
 - (1) Operate a representative number of windows and interior doors; and
 - (2) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.
- (c) The home inspector is not required to ~~observe~~-inspect:
 - (1) Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
 - (2) Carpeting; or
 - (3) Draperies, blinds, or other window treatments.

Authority G.S. 143-151.49.

11 NCAC 08 .1114 INSULATION AND VENTILATION

- (a) The home inspector shall ~~observe~~-inspect:
 - (1) Insulation and vapor retarders in unfinished spaces;
 - (2) Ventilation of attics and foundation areas;
 - (3) Kitchen, bathroom, and laundry venting systems; and
 - (4) The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.
- (b) The home inspector shall describe:
 - (1) Insulation in unfinished spaces; and
 - (2) ~~Absence—The absence~~ of insulation in unfinished space at conditioned surfaces.

- (c) The home inspector is not required to report on:
 - (1) Concealed insulation and vapor retarders; or
 - (2) Venting equipment that is integral with household appliances.
- (d) The home inspector shall:
 - (1) Move insulation where readily visible evidence indicates the possibility of a problem; and
 - (2) Move insulation where chimneys penetrate roofs, where plumbing drain/waste pipes penetrate floors, adjacent to ~~earth-filled~~ earth-filled stoops or porches, and at exterior doors.

Authority G.S. 143-151.49.

11 NCAC 08 .1115 BUILT-IN KITCHEN APPLIANCES

- (a) The home inspector shall ~~observe~~ inspect and operate the basic functions of the following kitchen appliances:
 - (1) Permanently installed ~~dishwasher,~~ dishwasher(s) through its a normal cycle;
 - (2) ~~Range, cook top,~~ Range(s), cook top(s), and permanently installed ~~oven,~~ oven(s);
 - (3) Trash ~~compactor,~~ compactor(s);
 - (4) Garbage ~~disposal,~~ disposal(s);
 - (5) Ventilation equipment or range ~~hood,~~ hood(s); and
 - (6) Permanently installed microwave ~~oven,~~ oven(s).
- (b) The home inspector is not required to ~~observe,~~ inspect:
 - (1) Clocks, timers, self-cleaning oven ~~function,~~ functions, or thermostats for calibration or automatic operation;
 - (2) Non built-in appliances; or
 - (3) Refrigeration units.
- (c) The home inspector is not required to operate:
 - (1) Appliances in use; or
 - (2) Any appliance that is shut down or otherwise inoperable.

Authority G.S. 143-151.49.

SECTION .1200 - N.C. HOME INSPECTOR DISCIPLINARY ACTIONS

11 NCAC 08 .1203 BOARD STAFF

The Engineering Division shall verify whether ~~the allegations listed in complaints~~ any allegations against a licensee are violations of the Standards of Practice, Code of Ethics, or of the General Statutes.

Authority G.S. 143-151.49; 150B-38(h).

11 NCAC 08 .1204 INVESTIGATION

(a) On receipt of a complaint conforming to this Section, the Engineering Division shall make an investigation of the ~~charges~~ alleged violations of the Rules or of the General Statutes, as well as alleged violations that may be discovered by the investigator,

and issue a report. ~~The report shall address each item alleged to be a violation of these Rules or of the General Statutes.~~

- (b) A copy of the complaint shall be mailed to the ~~home~~ inspector. The inspector shall submit a written response to the Engineering Division within two weeks after receipt of either the copy of the ~~complaint,~~ complaint or notification of additional alleged violations.
- (c) A copy of the report shall be mailed to the complainant and to the inspector.
- (d) The report shall state that the complaint either has or lacks sufficient evidence to support the allegations in the complaint.
- (e) If the report states that the allegations lack sufficient evidence, the Engineering Division shall:
 - (1) Advise the complainant in writing that the evidence was insufficient to support the allegations in the complaint.
 - (2) Advise the complainant that in order for the complaint to be reviewed pursuant to Paragraph (e)(2) of this Rule, the complaint may be reviewed by a committee of Board members appointed by the Chairman to determine whether the finding of the Engineering Division is correct.
 - (3) Advise the complainant that the complainant must make a written request for the review and must state in the request the reasons why the complainant is of the opinion the Engineering Division's determination is incorrect.
 - (4) If the complainant makes a written request for review by a committee of Board members, the ~~chairman~~ Chairman shall appoint the committee. The committee shall review the report and the complainant's documentation. If the committee finds that the allegations are unsupported by the evidence, the Engineering Division shall advise the complainant in writing that the committee has concurred with the Engineering Division's conclusion that the complaint lacks sufficient evidence to support the allegations in the complaint.

Authority G.S. 143-151.49; 150B-38(h).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0302.

Proposed Effective Date: March 1, 2005

Public Hearing:

Date: November 1, 2004

Time: 9:00 a.m.

Location: ASLB Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC

Reason for Proposed Action: *The Board finds it necessary to increase the alarm registration fee from \$20.00 to \$40.00.*

Procedure by which a person can object to the agency on a proposed rule: *Any objections may be submitted in writing to W. Wayne Woodard, ASLB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609. All comments should be submitted on or before December 14, 2004.*

Written comments may be submitted to: *W. Wayne Woodard, ASLB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

Comment period ends: *December 14, 2004*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0300 - PROVISIONS FOR REGISTRANTS

12 NCAC 11 .0302 FEES FOR REGISTRATION

(a) Registration fees are as follows:

- (1) ~~Twenty dollars (\$20.00)~~ Forty dollars (\$40.00) non-refundable ~~biannual~~ biennial registration fee;
- (2) Ten dollar (\$10.00) non-refundable re-issue fee for lost cards or for registration of an employee who changes employment to another licensee;
- (3) Ten dollar (\$10.00) non-refundable annual multiple registration fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Alarm Systems Licensing Board.

Authority G.S. 74D-2; 74D-5.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Landscape Architects intends to adopt the rule cited as 21 NCAC 26 .0510 and amend the rules cited as 21 NCAC 26 .0209-.0211, .0306.

Proposed Effective Date: *February 1, 2005*

Public Hearing:

Date: *November 1, 2004*

Time: *9:00 a.m.*

Location: *434 Fayetteville Street Mall, Suite 2010, Conference Rm. 1, Raleigh, NC*

Reason for Proposed Action: *The Board is implementing a disciplinary rule process and is adopting rules accordingly.*

Procedure by which a person can object to the agency on a proposed rule: *Written comments may be submitted to the Board's Director, Robert Upton, at the Board of Landscape Architects, P.O. Box 41225, Raleigh, NC 27629. Written comments should be submitted no later than December 14, 2004.*

Written comments may be submitted to: *Robert Upton, Board of Landscape Architects, P.O. Box 41225, Raleigh, NC 27629*

Comment period ends: *December 14, 2004*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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

SECTION .0200 - PRACTICE OF REGISTERED LANDSCAPE ARCHITECTS

21 NCAC 26 .0209 UNPROFESSIONAL CONDUCT

(a) The following representations or acts, among others, constitute "unprofessional conduct" within the meaning of G.S. 89A-7:

- (1) to allow one's name to be associated with an undertaking in any professional capacity without having served specifically in that capacity;
- (2) to accept compensation in whole or in part from fees, commissions, earnings, commercial or speculative profit emanating from sales of materials or services provided to a Landscape Architect's client by others;
- (3) to make exaggerated or misleading statements or claims about any personal qualifications, experience or performance;
- (4) to fail to disclose to a client or employer the existence of any financial interest which even remotely bears upon the Landscape Architectural services or project;
- (5) to fail to respond within 30 calendar days to any inquiry from this Board;
- (6) to fail to properly supervise his or her practice. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a registered landscape architect employed in that office who shall have direct knowledge and supervisory control of such work, except field offices maintained only for the purpose of project construction administration shall have at least one employee present with the supervising landscape architect maintaining control and making periodic visits.

~~(b) Duty of the Board. When the Board becomes aware of alleged unprofessional conduct, it shall send a "letter of inquiry" to the Landscape Architect allegedly involved and to the complainant. The Landscape Architect shall reply to this and any other inquiry of the Board within 30 calendar days. After receiving and considering the response from the Landscape Architect, the Board may send additional letters of inquiry to the Landscape Architect and other persons allegedly involved.~~

~~(c) Findings of the Board. Upon consideration of responses to inquiries, the Board shall determine what action shall be taken:~~

- ~~(1) if this Board determines that no disciplinary action is necessary, all parties previously contacted shall be so informed;~~
- ~~(2) if this Board determines that sufficient evidence of "unprofessional conduct" by the licensee exists to justify a contested case hearing before the Board pursuant to G.S. 150B, but the infraction is deemed to be minor, then the licensee may be offered a "letter of warning" in lieu of proceeding with that action by the Board and shall specify the Board's cause for concern and required corrective action by the licensee. Other persons previously contacted shall be informed that the Board has acted upon the matter;~~

~~(3) if this Board determines that a formal hearing should be held, G.S. 150B is applicable;~~

~~(4) if this Board determines that another person allegedly involved is an Architect, Geologist, Land Surveyor, or Professional Engineer relevant information shall be sent by letter to the respective professional board.~~

Authority G.S. 89A-3(c); 89A-7.

21 NCAC 26 .0210 DISHONEST PRACTICE

(a) The following practices, among others, constitute "dishonest practice" within the meaning of G.S. 89A-7:

- (1) to knowingly make any deceptive or false statement about another's professional work or to maliciously injure or attempt to injure the prospects, practice or employment position of those so engaged;
- (2) to knowingly make any deceptive or false statements in an application for examination or in any other statements or representations to this Board, to any public agency, to a prospective or actual client, or to another Landscape Architect;
- (3) to fail to notify this Board, if registered as a Landscape Architect in North Carolina, of disciplinary action by a Landscape Architectural Board in another jurisdiction.

(b) Because of the inherent conflict of interest with construction services, the landscape architect who also provides contracting services [Combined Design and Construction (Design-Build) Practice] shall be deemed by the Board to be engaged in "dishonest practice" unless he does the following:

- (1) Uses the term "limited landscape architectural services" in all representations to the public and the client.
- (2) Affixes a notation on each construction drawing and the cover of technical specifications stating "These construction drawings and technical specifications represent the full extent of the limited landscape architectural services provided for this project".

~~(c) Duty of the Board. When the Board becomes aware of alleged dishonest practice, it shall send a "letter of inquiry" to the Landscape Architect allegedly involved and to the complainant. The Landscape Architect shall reply to this and any other inquiry of the Board within 30 calendar days. After receiving and considering the response from the Landscape Architect, the Board may send additional letters of inquiry to the Landscape Architect and other persons allegedly involved.~~

~~(d) Findings of the Board. Upon consideration of responses to inquiries, the Board shall determine what action shall be taken:~~

- ~~(1) if this Board determines that no disciplinary action is necessary, all parties previously contacted shall be so informed;~~
- ~~(2) if this Board determines that sufficient evidence of "dishonest practice" by the licensee exists to justify a contested case~~

hearing before the Board pursuant to G.S. 150B, but the infraction is deemed to be minor, then the licensee may be offered a "letter of warning" in lieu of proceeding with that hearing. This "letter of warning" shall note the licensee's acceptance of such action by the Board and shall specify the Board's cause for concern and required corrective action by the licensee. Other persons previously contacted shall be informed that the Board has acted upon the matter;

- (3) if this Board determines that a formal hearing should be held, G.S. 150B is applicable;
- (4) if this Board determines that another person allegedly involved is an Architect, Geologist, Land Surveyor, or Professional Engineer relevant information shall be sent by letter to the respective professional board.

Authority G.S. 89A-3(c); 89A-7.

21 NCAC 26 .0211 INCOMPETENCE

(a) The following acts or omissions, among others, are deemed to be "incompetence" within the meaning of G.S. 89A-7:

- (1) to attempt to perform professional services which are beyond the qualifications which the landscape architect and those who are engaged as consultants are qualified by education, training and experience in the specific technical areas involved;
- (2) to fail to use diligence in planning, designing, supervising, managing or inspecting landscape architectural projects directly resulting in improper and unprofessional practices and results;
- (3) to plan, perform, or supervise work for clients in such a manner and with such results as to be below the level of professional competency exercised and expected of other landscape architects of good standing who are practicing in the area;
- (4) to be guilty of such acts or omissions as to demonstrate to the satisfaction of the Board that the holder of the certificate is physically or mentally incompetent or habitually addicted to habits of such character as to render the licensee unfit to continue practice.

(b) ~~Duty of the Board. When the Board becomes aware of alleged incompetence, it shall send a "letter of inquiry" to the Landscape Architect allegedly involved and to the complainant. The Landscape Architect shall reply to this and any other inquiry of the Board within 30 calendar days. After receiving and considering the response from the Landscape Architect, the Board may send additional letters of inquiry to the Landscape Architect and other persons allegedly involved.~~

(c) ~~Findings of the Board. Upon consideration of responses to inquiries, the Board shall determine what action shall be taken:~~

- (1) ~~if this Board determines that no disciplinary action is necessary, all parties previously contacted shall be so informed;~~
- (2) ~~if this Board determines that sufficient evidence of "incompetence" by the licensee exists to justify a contested case hearing before the Board pursuant to G.S. 150B, but the infraction is deemed to be minor, then the licensee may be offered a "letter of warning" in lieu of proceeding with that hearing. This "letter of warning" shall note the licensee's acceptance of such action by the Board and shall specify the Board's cause for concern and required corrective action by the licensee. Other persons previously contacted shall be informed that the Board has acted upon the matter;~~
- (3) ~~if this Board determines that a formal hearing should be held, G.S. 150B is applicable;~~
- (4) ~~if this Board determines that another person allegedly involved is an Architect, Geologist, Land Surveyor, or Professional Engineer relevant information shall be sent by letter to the respective professional board.~~

Authority G.S. 89A-3(c); 89A-7.

SECTION .0300 - EXAMINATION AND LICENSING PROCEDURES

21 NCAC 26 .0306 REINSTATEMENT AFTER REVOCATION

Any person whose license is ~~suspended or~~ revoked may, at the discretion of the board, be relicensed or reinstated at any time without an examination by majority vote of the board on written application made to the board showing cause justifying relicensing or reinstatement.

Authority G.S. 89A-3(c).

SECTION .0500 - BOARD DISCIPLINARY PROCEDURES

21 NCAC 26 .0510 DISCIPLINARY REVIEW PROCESS

(a) General. Alleged unprofessional conduct, dishonest practice, incompetence of a licensee, or preliminary evidence of a violation of the Landscape Architecture Licensing Act or the rules shall be subject to Board investigation and may be subject to disciplinary action by the Board.

(b) Preliminary Review.

- (1) Upon receipt of a complaint involving a licensee, an investigation shall be initiated by the Board's Chairman.
- (2) A written notice and explanation of the allegation shall be forwarded to the person or firm against whom the charge is made and a response shall be requested of the person or firm so charged within 30 days of receipt of

said notice to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.

- (3) In the discretion of the Board Chair, a field investigation may be performed.
- (4) After preliminary evidence has been obtained, the Board Chair shall either:
 - (A) recommend dismissal of the charge;
 - or
 - (B) refer the matter to the Disciplinary Review Committee.
- (5) If the Board Chair recommends dismissal, the Chairman shall give a summary report to the Board and a vote shall be called to dismiss the complaint. If the Board does not vote to dismiss the complaint, the matter shall be forwarded to the Disciplinary Review Committee for further consideration.

(c) The Disciplinary Review Committee.

- (1) Disciplinary Review Committee shall be made up of the following individuals:
 - (A) one member of the Board who is licensed as a Landscape Architect;
 - (B) one member of the Board who is not licensed (public member); and
 - (C) the Board Chair.
- (2) Upon review of the evidence, the Disciplinary Review Committee shall present to the Board a written recommendation that may include the following:
 - (A) The charge be dismissed as unfounded or that the Board is without jurisdiction over the matter;
 - (B) The charge is admitted as true, whereupon the Board may accept the admission of guilt by the person charged and sanction the individual or company accordingly;
 - (C) The charge be presented to the full Board for a hearing and determination of sanctions by the Board in accordance with the substantive and procedural requirements of the provisions of G.S. 150B. It is acknowledged that the Board, pursuant to G.S. 150B-40 may request the appointment of an administrative law judge to hear the matter.

(d) Consultant. A consultant to the Disciplinary Review Committee shall be designated by the legal counsel of the Board if the Chair of the Disciplinary Review Committee determines that it needs assistance. The consultant shall be a currently licensed Landscape Architect, selected from former Board members or other licensed professionals who are knowledgeable with the Board's processes and have expressed an interest in serving as a consultant. The consultant shall review all case

materials and assist the Disciplinary Review Committee in making a recommendation as to the merits of the case.

(e) Board Decision. At least 15 days written notice of the date of consideration by the Board of the recommendations of the Disciplinary Review Committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(f) Settlement Conference. When the Board issues a notice of hearing, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's Disciplinary Review Committee do not agree to a resolution of the dispute for the full Board's consideration, the original disciplinary review process shall commence. During the course of the settlement conference, no sworn testimony shall be taken.

(g) Upon review of the available evidence, the Disciplinary Review Committee may present to the Board a written recommendation that:

- (1) the charge be dismissed as unfounded or for lack of jurisdiction where the Board is without jurisdiction over the matter; or
- (2) the Board accept the proposed settlement negotiated in an effort to resolve the alleged violations; or
- (3) acknowledge an in passé in the negotiations and proceed with an investigation of the allegations.

Authority G.S. 89A-3.1; 89A-7.

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend the rules cited as 21 NCAC 46 .2201, .2507.

Proposed Effective Date: *February 1, 2005*

Public Hearing:

Date: *November 16, 2004*

Time: *9:00 a.m.*

Location: *North Carolina Board of Pharmacy, 6015 Farrington Rd., Suite 201, Chapel Hill, NC*

Reason for Proposed Action: *To delete "inactive" status of license so that all licensees obtain continuing education to ensure that licensees are competent to practice. To allow pharmacists to administer vaccines so that the public has greater access to vaccines.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections regarding the proposed rule changes to David R. Work, North Carolina Board*

of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517.

Written comments may be submitted to: David R. Work, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Comment period ends: December 14, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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

SECTION .2200 – CONTINUING EDUCATION

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

- (a) As a condition of license renewal, each practicing pharmacist holding an active license shall report on renewal forms the hours of continuing education obtained during the preceding year. Annual accumulation of ten hours is considered satisfactory to meet the quantitative requirement of this Rule.
(b) All records, reports of accredited hours and certificates of credit shall be kept at the pharmacist's regular place of practice for verification by inspectors during regular or other visits. The Board may require submission of such documentation on a random basis. Pharmacists who do not practice regularly at one location shall produce such records within 24 hours of a request from Board authorized personnel. All records of hours and certificates of credit shall be preserved for at least three years.
(c) All continuing education shall be obtained from a provider approved by the Board. In order to receive credit, continuing education courses shall have the purpose of increasing the participant's professional competence and proficiency as a pharmacist. At least five hours of the continuing education credits must be obtained through contact programs in any calendar year. Contact programs are those programs in which there is an opportunity for live two-way communication between the presenter and attendee.
(d) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe

the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state.

(e) Pharmacists who list their status as "Inactive" on the annual application for license renewal and who certify that they are no longer engaged in the practice of pharmacy are not required to obtain the continuing education hours required by this Rule. Pharmacists on inactive status are prohibited from practicing pharmacy in this State. Should a pharmacist on inactive status wish to return to active status, then all continuing education hours for the period of inactive status must be obtained, and the pharmacist shall be treated the same as an applicant for reinstatement.

Authority G.S. 90-85.6; 90-85.17; 90-85.18.

SECTION .2500 - MISCELLANEOUS PROVISIONS

Note: The language in italics is pending review before the Rules Review Commission.

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

A pharmacist who has successfully completed a course of training approved by the Board, and the North Carolina Medical Board, or the North Carolina Board of Nursing, may administer immunizations.

(a) Purpose. The purpose of this Section is to provide standards for pharmacists engaged in the administration of influenza vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
(2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
(A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
(B) the patient at the direction of a practitioner.
(3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
(4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
(5) "Board" means the North Carolina Board of Pharmacy.
(6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained

by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.

- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol—A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of ~~influenza~~-vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for

handling and disposal of used or contaminated equipment and supplies.

- (3) The pharmacist or pharmacist's agent must give the appropriate ~~influenza~~-vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
 - (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
 - (5) The pharmacist shall not administer ~~influenza~~ vaccines to patients under 18 years of age.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer ~~influenza~~ vaccines shall:
- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) 3 hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer ~~influenza~~-vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the written protocols;
- (2) be easily accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage; and

(3) review written protocol with pharmacist at least annually and revise if necessary.

(f) *Supervision.* Pharmacists who administer vaccines shall be under the supervision of a physician who agrees to meet the following requirements:

- (1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;
- (2) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;
- (3) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and
- (4) is available through direct telecommunication for consultation, assistance, and direction.

(g) *Drugs.* The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this section shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall

return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(h) *Record Keeping and Reporting*

- (1) A pharmacist who administers any ~~influenza~~ vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) The name or identifiable initials of the administering pharmacist.
- (2) A pharmacist who administers ~~influenza~~ vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(i) *Confidentiality.*

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.
- (3) Violations of these Rules by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

Authority G.S. 90-85.3; 90-85.6.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, October 21, 2004, 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 Monday, October 18, 2004 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
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

October 21, 2004
November 18, 2004
December 16, 2004

RULES REVIEW COMMISSION SEPTEMBER 16, 2004 MINUTES

The Rules Review Commission met on Thursday, September 16, 2004, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jennie Hayman, Graham Bell, Jeffrey Gray, Thomas Hilliard, Robert Saunders, Lee Settle, Dana Simpson, John Tart and David Twiddy.

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

The following people attended:

| | |
|------------------|--|
| Steve Wall | DENR |
| Brooks Skinner | Department of Administration |
| Marvin Waters | Crime Control & Public Safety |
| Roger Houtchins | Crime Control & Public Safety |
| Casandra Skinner | Crime Control & Public Safety |
| Joan Troy | Wildlife Resources Commission |
| David Cobb | Wildlife Resources Commission |
| Cathy Griffin | NC Community Colleges |
| Suzanne Williams | NC Community Colleges |
| Lynn Bannon | NC Board of Massage & Body Work Therapy |
| Sharon Thompson | Johnston Community College |
| Ann Christian | Attorney |
| Rick Roger | BTI |
| Charles McDarris | Attorney/NC Private Protective Services Board |
| Terry Wright | NC Private Protective Services Board |
| David McLeod | Department of Agriculture |
| Fred Kirkland | NCDA&CS |
| Rachel Mann | AMTA |
| Linda Harrington | Interpreter and Transliterator Licensing Board |
| Kathy Beetham | Interpreter and Transliterator Licensing Board |
| Diane Miller | Attorney General's Office |

| | |
|-------------------|---|
| Barry Gupton | Department of Insurance |
| Frank Folger | Department of Insurance |
| Ellie Sprenkel | Department of Insurance |
| Fred Fuller | Department of Insurance |
| Mike Lopazanski | DENR/DCM |
| Andy Ellen | NC Retail Merchants |
| Dedra Alston | DENR |
| Dana Sholes | OAH |
| Belinda Loftin | DMF |
| Lisa Martin | NC Home Builders Association |
| Robert Privott | NC Home Builder Association |
| Sue Grayson | DENR |
| Susan Dail | DENR |
| Kristi Nixon | DENR |
| Amanda Little | NCDMF |
| Frank Crawley | Marine Fishers Commission |
| Delores Joyner | State Personnel Commission |
| James Wellons | Attorney/Interpreter and Transliterator Licensing Board |
| Palmer Sugg | NC Board of Massage & Body Work Therapy |
| Carson Carmichael | Board of Pharmacy |

APPROVAL OF MINUTES

The meeting was called to order at 10:15 a.m. with Chairman Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 19, 2004 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

Commissioner Gray did not vote or participate in discussions concerning the NC Private Protective Services Board.

12 NCAC 7D .0903; .0909; .0910: NC Private Protective Services Board – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 7H .2602: Coastal Resources Commission – The Commission approved the rewritten rule submitted by the agency.

23 NCAC 2D .0202: NC State Board of Community Colleges - The Commission approved this rule contingent upon receiving a technical change. The technical change was not received.

25 NCAC 1C .0301; .0801; .0804; .1009: State Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

25 NCAC 1C .0202-.0204; .0209; .0212; .0213; .0302-.0305; .0310; .0403; .0506; .0701-.0703; .1002; .1007; .1008: State Personnel Commission – The Commission approved these rules.

25 NCAC 1C .0402: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

25 NCAC 1C .0503; .0504; .0509; .0803: State Personnel Commission – These rules were withdrawn by the agency.

25 NCAC 1E .0102; .0201; .0202; .0206; .0208; .0209; .0212; .0313; .0314; .0705; .0706; .0708; .0709; .0804; .0902; .0909; .1001; .1101; .1102; .1104; .1105; .1111; .1112; .1301; .1304; .1401-.1411; .1601: State Personnel Commission – The Commission approved these rules.

25 NCAC 1E .0203; .0301; .1004; .1007; .1008: State Personnel Commission – There was no action taken on these rules.

25 NCAC 1E .0207; .0211; .0315: State Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

25 NCAC 1E .0205: State Personnel Commission – The agency decided not to rewrite this rule and it will be returned to the agency.

25 NCAC 1E .0216; .0311; .0903; .0904: State Personnel Commission – These rules were withdrawn by the agency.

25 NCAC 01L .0401: State Personnel Commission – The Commission approved this rule.

LOG OF FILINGS

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

1 NCAC 17 .0702: Domestic Violence Commission – This rule was withdrawn by the agency.

10A NCAC 27G .0104; .4202: Commission of Mental Health – The Commission approved these rules subsequent upon receiving a technical change. The technical change was received.

10A NCAC 28A .0101: Commission for Mental Health – The Commission approved this rule contingent upon receiving a technical change. The technical change was received.

10A NCAC 28D .0208: Commission for Mental Health – The Commission approved this rule contingent upon receiving a technical change. The technical change was received.

11 NCAC 10 .1106: Department of Insurance – The rule was approved. Commissioner Twiddy did not vote or participate in the consideration of this rule.

14A NCAC 12 .0106: Crime Control & Public Safety – The Commission objected to the rule due to failure to comply with the Administrative Procedure Act. This rule was amended without the publication of notice in the Register pursuant to G.S. 150B-21.5(a). While that provision does allow the change of names and positions, it does not provide for the weight changes this rule makes in (a). The agency must go through the entire process to make this change.

14A NCAC 12 .0108: Crime Control & Public Safety – The Commission objected to the rule due to ambiguity. In (g)(7), when a referee orders purse withheld because of an unintentional foul, it is not clear what standards the Division director or designee is to use in determining the disposition of the purse. This objection applies to existing language in the rule.

14A NCAC 12 .0110: Crime Control & Public Safety – The Commission objected to the rule due to ambiguity. In (b), it is not clear what attachments are required. This objection applies to existing language in the rule.

14A NCAC 12 .0111: Crime Control & Public Safety – The Commission objected to the rule due to ambiguity. In (f), it is not clear what attachments are required. In (o)(5), it is not clear when other introductions will be appropriate to a match. This objection applies to existing language in the rule.

14A NCAC 12 .0112: Crime Control & Public Safety – The Commission objected to the rule due to ambiguity. The second sentence in (k) was presumably removed from this rule in 1996 but somehow found its way back into the Code. It is still not clear what is meant by “impale interested parties” nor what is meant by “the appropriate circuit court” in this State. This objection applies to existing language in the rule.

15A NCAC 3S .0102: Marine Fisheries Commission – The Commission objected to the rule due to ambiguity. In (b)(2), it is not clear what the time period is for vessel owners to contact the agency, or conversely, how that period is determined. In (b)(9), it is not clear what standards the Fisheries Director is to use in determining the amount to reserve as a contingency fund.

15A NCAC 3S .0103: Marine Fisheries Commission – The Commission objected to the rule due to ambiguity. In (b)(2)(B), it is not clear what the time period is, or conversely, how it is determined.

15A NCAC 7H .0306: Coastal Resources Commission – The Commission objected to the rule due to ambiguity. In (c)(1), it is not clear how to determine if a facility exhibits “overriding factors of national or state interest and public benefit.” In (c)(3), it is not clear how to determine if a facility will be “reasonably safe from flood and erosion related damage.” In (d), it is not clear what constitutes “major damage.” It is also not clear what makes a source “reliable.” In (h), it is not clear how much interference is “undue” interference. In (i), it is not clear what would constitute “all reasonable means and methods.” Most of these issues are continuing objections from 1992 and 1995 when the agency was able to, and did, file the rule over the Rules Review Commission objection. This objection applies to existing language in the rule.

15A NCAC 10A .1101: Wildlife Resources Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. Paragraph (a) goes beyond a waiver provision and gives the executive director authority to repeal and amend rules. There is no authority cited for the Wildlife Resources Commission to delegate that authority. In (a)(1), it is not clear what standards the executive director would use to find an “unnecessary hardship.” In (b)(1), it is not clear what about the applicant’s history of past compliance or noncompliance with laws and rules the executive director is to consider in granting a waiver.

15A NCAC 18A: All Rules: Commission For Health Services – The Commission approved these rules. Commissioner Bell did not vote or participate in the consideration of these rules.

21 NCAC 25 .0101: Interpreter and Transliterator Licensing Board – The Commission objected to the rule due to ambiguity. In (b)(9), line 33, it is unclear what is meant by the requirement “by making the individual more rounded.” It is hard to conceive of a college course that would not fulfill this requirement.

21 NCAC 25 .0206: Interpreter and Transliterator Licensing Board – The Commission objected to the rule due to ambiguity. In (b) it is unclear if there is any distinction between the “surrender[ed]” and lapse of the underlying foreign license, which is the basis for receiving N.C. licensure by reciprocity. If it lapses, e.g. for failure to pay the license renewal fee, does that require the N.C. license to be revoked? All the language in this rule looks as if it is intended to address the situation where someone is about to have some enforcement action taken against his or her license, not lose it because the person is no longer interested in maintaining a license in that jurisdiction. But the strict application of the language of the rule could require the board to revoke a license for its mere lapse.

21 NCAC 25 .0207: Interpreter and Transliterator Licensing Board – The Commission objected to the rule due to lack of statutory authority. In (a), lines 4 and 5, this rule purports to paraphrase the exemption from licensure and the other restrictions of this act found in G.S. 90D-4(b)(2). However the exemption in the rule applies only to persons providing interpreting or transliterating services while enrolled as student in a mentoring or training program approved by the board. The language in the statute makes no such distinction or limitation. The authority to make rules concerning the approval of these programs does not convey the authority to limit application of the statutory exemption to those who are only students in these programs. That would also mean that the restriction in (b)(4) that any mentor or trainer used by the program must be “currently licensed by the [N.C.] Board” is beyond this board’s rulemaking authority.

21 NCAC 25 .0208: Interpreter and Transliterator Licensing Board – The Commission objected to the rule due to ambiguity. It is unclear in (1) when the 30 day deadline to report a “charge” or “conviction” of a crime actually commences. A person is almost always charged with a criminal offense more than a day before he or she is actually convicted of it, when there is a conviction. That would seem to indicate that the obligation to report, if based on either occurring, is almost always going to be from the charge, and not the conviction. So why phrase the rule as an alternative or choice, unless there is something not expressed that is actually within the meaning of this rule. If a person failed to report a charge within 30 days, but did report a subsequent conviction on that charge within 30 days of the conviction, has the person violated or complied with this requirement? That is unclear from the rule. If, in that above question, the person is not in violation of the rule, does that mean that if the person waited until the outcome of a trial and was found not guilty, and then subsequently reported the charge within 30 days of being found not guilty, that the person is in violation of the rule?

The meeting adjourned at 11:45 a.m. for a short break.

The meeting reconvened at 11:56 a.m.

21 NCAC 30 .0102; .0203-.0206; .0301-.0303; .0403; .0404; .0501-.0515; .0601-.0633; .0701; .0702; .0901-.0905: Board of Massage and Bodywork Therapy – The Commission extended the period of review in order to give the Board a rule opponents more time to work with these rules and to perhaps narrow the scope of objection.

Building Code Council: The Commission approved all the rules on the Log of Filing (Log #213).

TEMPORARY RULES

21 NCAC 46 .2507: NC Board of Pharmacy – There has been no response from the Board of Pharmacy and no action was taken.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca asked the Commission members to update their contact information.

No new business was discussed.

The meeting adjourned at 1:00 p.m.

The next meeting of the Commission is Thursday, October 21, 2004, at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**Commission Review/Permanent Rules
Log of Filings (Log #214)
August 21, 2004 through September 20, 2004**

BUILDING COMMISSION

| | | | | |
|----------------------|----|------|-----|-------|
| <u>Pre-Selection</u> | 01 | NCAC | 30D | .0302 |
| Amend/* | | | | |

MEDICAL CARE COMMISSION

| | | | | |
|--|-----|------|-----|-------|
| <u>Supplemental Rules</u> | 10A | NCAC | 13B | .3401 |
| Amend/* | | | | |
| <u>Definitions</u> | 10A | NCAC | 13B | .3402 |
| Amend/* | | | | |
| <u>Licensure Application</u> | 10A | NCAC | 13B | .3403 |
| Repeal/* | | | | |
| <u>Federally Certified Primary Care Hospital</u> | 10A | NCAC | 13B | .3404 |
| Repeal/* | | | | |
| <u>Designated Critical Access</u> | 10A | NCAC | 13B | .3405 |
| Amend/* | | | | |
| <u>Neonatal Level II and Level IV Nursery</u> | 10A | NCAC | 13B | .6204 |
| Amend/* | | | | |
| <u>Health Care</u> | 10A | NCAC | 13F | .0902 |
| Amend/* | | | | |

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

| | | | | |
|---|----|------|-----|-------|
| <u>Admission of Trainees</u> | 12 | NCAC | 09B | .0203 |
| Amend/* | | | | |
| <u>Training Course Enrollment</u> | 12 | NCAC | 09B | .0204 |
| Amend/* | | | | |
| <u>DJJDP Specialized Instructor Training-Restraints, Control.</u> | 12 | NCAC | 09B | .0241 |
| Adopt/* | | | | |
| <u>Specialized Instructor Certification</u> | 12 | NCAC | 09B | .0304 |
| Amend/* | | | | |
| <u>Terms and Conditions of Specialized Instructor Certification</u> | 12 | NCAC | 09B | .0305 |
| Amend/* | | | | |
| <u>Suspension: Revocation: or Denial of Certification</u> | 12 | NCAC | 09G | .0504 |
| Amend/* | | | | |
| <u>Suspension: Revocation: or Denial of Certification</u> | 12 | NCAC | 09G | .0505 |
| Amend/* | | | | |

ENVIRONMENTAL MANAGEMENT COMMISSION

| | | | | |
|---|-----|------|-----|-------|
| <u>Cape Fear River Basin</u> Amend/* | 15A | NCAC | 02B | .0311 |
| PUBLIC INSTRUCTION, DEPARTMENT OF | | | | |
| <u>Application for Approval: Criteria</u> Amend/* | 16 | NCAC | 06C | .0202 |
| REVENUE, DEPARTMENT OF | | | | |
| <u>Free Distribution by Manufacturer</u> Repeal/* | 17 | NCAC | 04C | .0802 |
| <u>Attribution/Expenses/Nontaxable Income</u> Amend/* | 17 | NCAC | 05C | .0304 |
| <u>Preliminary Statement</u> Amend/* | 17 | NCAC | 05C | .0601 |
| <u>Business and Non-business Income</u> Amend/* | 17 | NCAC | 05C | .0700 |
| <u>Division of Income in General</u> Amend/* | 17 | NCAC | 05C | .0701 |
| <u>Proration of Deductions</u> Amend/* | 17 | NCAC | 05C | .0704 |
| <u>In General</u> Amend/* | 17 | NCAC | 05C | .0801 |
| <u>Property Used for the Production of Business Income</u> Amend/* | 17 | NCAC | 05C | .0802 |
| <u>Denominator of Payroll Factor</u> Amend/* | 17 | NCAC | 05C | .0906 |
| <u>Numerator of Payroll Factor</u> Amend/* | 17 | NCAC | 05C | .0907 |
| <u>Sales Incidental to General Business Operations</u> Amend/* | 17 | NCAC | 05C | .1002 |
| <u>Corporations Allocating Their Net Income</u> Amend/* | 17 | NCAC | 05C | .1506 |
| <u>Business Income or Non-business Income</u> Amend/* | 17 | NCAC | 05C | .1702 |
| <u>Dividends Received from Disc</u> Amend/* | 17 | NCAC | 05C | .2404 |
| CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF | | | | |
| <u>Professional Ethics and Conduct CPE</u> Adopt/* | 21 | NCAC | 08G | .0410 |
| FUNERAL SERVICE, BOARD OF | | | | |
| <u>Traineeship</u> Amend/* | 21 | NCAC | 34B | .0102 |
| <u>Authorized Practice: Supervision</u> Amend/* | 21 | NCAC | 34B | .0103 |
| <u>Change in Employment</u> Amend/* | 21 | NCAC | 34B | .0104 |
| <u>Funeral Director Trainee Application Form</u> | 21 | NCAC | 34B | .0105 |

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|--|----|------|-----|-------|
| Amend/* | | | | |
| <u>Embalmer Trainee Application Form</u> | 21 | NCAC | 34B | .0106 |
| Amend/* | | | | |
| <u>Funeral Service Trainee Application Form</u> | 21 | NCAC | 34B | .0107 |
| Amend/* | | | | |
| <u>Reports on Work</u> | 21 | NCAC | 34B | .0110 |
| Amend/* | | | | |
| <u>Work Report Form</u> | 21 | NCAC | 34B | .0111 |
| Repeal/* | | | | |
| <u>Trainee Final Affidavit Form</u> | 21 | NCAC | 34B | .0120 |
| Amend/* | | | | |
| <u>Expiration Notice</u> | 21 | NCAC | 34B | .0121 |
| Amend/* | | | | |
| <u>Application form for Funeral Director's License</u> | 21 | NCAC | 34B | .0203 |
| Amend/* | | | | |
| <u>Application Form for Embalmer's License</u> | 21 | NCAC | 34B | .0204 |
| Amend/* | | | | |
| <u>Application Form for Funeral Service License</u> | 21 | NCAC | 34B | .0205 |
| Amend/* | | | | |
| <u>Passing Score</u> | 21 | NCAC | 34B | .0208 |
| Amend/* | | | | |
| <u>Request for Review of Examination</u> | 21 | NCAC | 34B | .0210 |
| Amend/* | | | | |
| <u>National Board Certificate</u> | 21 | NCAC | 34B | .0211 |
| Amend/* | | | | |
| <u>Record and Bookkeeping Requirements</u> | 21 | NCAC | 34B | .0301 |
| Amend/* | | | | |
| <u>License Certificate for Practice of Funeral Directing</u> | 21 | NCAC | 34B | .0302 |
| Amend/* | | | | |
| <u>License Certificate for Practice of Embalming</u> | 21 | NCAC | 34B | .0303 |
| Amend/* | | | | |
| <u>License Certificate for Practice of Funeral Service</u> | 21 | NCAC | 34B | .0304 |
| Amend/* | | | | |
| <u>Change of License Request</u> | 21 | NCAC | 34B | .0305 |
| Amend/* | | | | |
| <u>License Renewal Form</u> | 21 | NCAC | 34B | .0309 |
| Amend/* | | | | |
| <u>Establishment and Approval of Courses</u> | 21 | NCAC | 34B | .0401 |
| Amend/* | | | | |
| <u>Continuing Education Card</u> | 21 | NCAC | 34B | .0404 |
| Amend/* | | | | |
| <u>Application Form for Approval of Course</u> | 21 | NCAC | 34B | .0405 |
| Amend/* | | | | |
| <u>Application Form for Approval of Sponsor</u> | 21 | NCAC | 34B | .0406 |
| Adopt/* | | | | |
| <u>Purpose and Definitions</u> | 21 | NCAC | 34B | .0407 |
| Adopt/* | | | | |
| <u>Continuing Education Program</u> | 21 | NCAC | 34B | .0408 |
| Adopt/* | | | | |
| <u>Accreditation Standards</u> | 21 | NCAC | 34B | .0409 |
| Adopt/* | | | | |
| <u>Accreditation of Sponsors and Programs</u> | 21 | NCAC | 34B | .0410 |

| | | | | |
|--|----|------|-----|-------|
| Adopt/* | | | | |
| <u>General Course Approval</u> | 21 | NCAC | 34B | .0411 |
| Adopt/* | | | | |
| <u>Accredited Sponsors</u> | 21 | NCAC | 34B | .0412 |
| Adopt/* | | | | |
| <u>Accreditation of Prerecorded Programs and Live Programs</u> | 21 | NCAC | 34B | .0413 |
| Adopt/* | | | | |
| <u>Accreditation of Computer-Based CE</u> | 21 | NCAC | 34B | .0414 |
| Adopt/* | | | | |
| <u>Computation of Credit</u> | 21 | NCAC | 34B | .0415 |
| Adopt/* | | | | |
| <u>Application Form for License by Out-of-State Licensees</u> | 21 | NCAC | 34B | .0502 |
| Amend/* | | | | |
| <u>Application Form for Courtesy Card</u> | 21 | NCAC | 34B | .0508 |
| Amend/* | | | | |
| <u>Courtesy Card Renewal Form</u> | 21 | NCAC | 34B | .0510 |
| Amend/* | | | | |
| <u>Part-Time and Independent Contractors Affidavit</u> | 21 | NCAC | 34B | .0612 |
| Amend/* | | | | |
| <u>Funeral Establishment Inspection Form</u> | 21 | NCAC | 34B | .0615 |
| Amend/* | | | | |
| <u>Indication of Approval of Forms</u> | 21 | NCAC | 34D | .0104 |
| Repeal/* | | | | |
| <u>Record and Bookkeeping Requirements</u> | 21 | NCAC | 34D | .0301 |
| Amend/* | | | | |
| <u>Certificate of Performance</u> | 21 | NCAC | 34D | .0303 |
| Amend/* | | | | |
| <u>Application for Reimbursement</u> | 21 | NCAC | 34D | .0402 |
| Amend/* | | | | |
| <u>Processing Applications</u> | 21 | NCAC | 34D | .0403 |
| Amend/* | | | | |

PHARMACY, BOARD OF

| | | | | |
|--|----|------|----|-------|
| <u>Administration of Vaccines by Pharmacists</u> | 21 | NCAC | 46 | .2507 |
| Amend/* | | | | |

PHYSICAL THERAPY EXAMINERS, BOARD OF

| | | | | |
|--|----|------|-----|-------|
| <u>Foreign-Trained Physical Therapists</u> | 21 | NCAC | 48E | .0110 |
| Amend/* | | | | |

RESPIRATORY CARE BOARD

| | | | | |
|----------------------------|----|------|----|-------|
| <u>Application Process</u> | 21 | NCAC | 61 | .0201 |
| Amend/* | | | | |
| <u>License Renewal</u> | 21 | NCAC | 61 | .0302 |
| Amend/* | | | | |

STATE PERSONNEL COMMISSION

| | | | | |
|----------------------------------|----|------|-----|-------|
| <u>Participation and Purpose</u> | 25 | NCAC | 01L | .0302 |
| Amend/* | | | | |

RULES REVIEW COMMISSION

| | | | | |
|---|----|------|-----|-------|
| <u>Responsibilities: Agencies</u> Amend/* | 25 | NCAC | 01L | .0303 |
| <u>Responsibilities: Managers and Supervisors</u> Amend/* | 25 | NCAC | 01L | .0304 |
| <u>Responsibilities: Office of State Personnel</u> Amend/* | 25 | NCAC | 01L | .0305 |
| <u>Administration: Definitions</u> Repeal/* | 25 | NCAC | 01L | .0306 |
| <u>Course Scheduling and Site Selections</u> Repeal/* | 25 | NCAC | 01L | .0307 |

AGENDA
RULES REVIEW COMMISSION
October 21, 2004

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Crime Control & Public Safety - 14A NCAC 12 .0106; .0108; .0110-.0112 (Objection Bryan)
 - B. Marine Fisheries Commission -15A NCAC 3S .0102; .0103 (Bryan)
 - C. Coastal Resources Commission – 15A NCAC 7H .0306(Bryan)
 - D. Wildlife Resources Commission – 15A NCAC 10A .1101 (Bryan)
 - E. Commission for Health Services – 15A NCAC 18A .2620 (Bryan)
 - F. Interpreter and Transliterator Licensing Board - 21 NCAC 25 .0101; .0206-.0208 (DeLuca)
 - G. Massage Board & Body Work Therapy – 21 NCAC 30 .0102; .0203-.0206; .0301-.0303; .0403; .0404; .0501-.0515; .0601-.0633; .0701; .0702; .0901-.0905 (DeLuca)
 - H. State Board of Community Colleges – 23 NCAC 2D .0202 (DeLuca)
 - I. State Personnel Commission – 25 NCAC 1E .0203; .0301; .1004 (Bryan)
 - J. State Personnel Commission – 25 NCAC 1E .1007; .1008; (Bryan)
- IV. Review of Rules (Log Report #214)
- V. Review of Temporary Rules (if any)
- VI. Commission Business

Next meeting: November 18, 2004

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 <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

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|--------------------|------------|-------------------------|---|
| <u>ABC COMMISSION</u> | | | | |
| ABC Commission v. Pantry, Inc. T/A Pantry 355 | 03 ABC 1094 | Gray | 09/01/04 | |
| ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop | 04 ABC 0341 | Mann | 07/16/04 | |
| ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream | 04 ABC 0695 | Wade | 07/20/04 | |
| ABC Commission v. KOL, Inc, T/A Wards Grocery | 04 ABC 0872 | Wade | 09/21/04 | |
| <u>VICTIMS COMPENSATION</u> | | | | |
| Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Comp. | 03 CPS 2320 | Conner | 07/23/04 | |
| Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission | 03 CPS 2353 | Conner | 07/12/04 | |
| Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services | 04 CPS 0399 | Chess | 09/16/04 | |
| <u>DEPARTMENT OF AGRICULTURE</u> | | | | |
| NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co. | 04 DAG 0110 | Gray | 07/21/04 | |
| <u>DEPARTMENT OF ADMINISTRATION</u> | | | | |
| Larry Yancey v. GACPD, DOA | 04 DOA 0896 | Morrison | 07/28/04 | |
| <u>HEALTH AND HUMAN SERVICES</u> | | | | |
| Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development | 98 DHR 0235 | Gray | 09/16/04 | |
| Margaret Bollo v. DHHS, Broughton Hospital | 03 DHR 0444 | Gray | 07/21/04 | |
| Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS | 03 DHR 0884 | Lassiter | 05/18/04 | |
| Olufemi Augustine Ohome v. DHHS, Div. of Facility Services | 03 DHR 1062 | Lassiter | 05/24/04 | |
| Karen A. Anders v. DHHS, Div of Facility Services | 03 DHR 1217 | Gray | 09/20/04 | |
| Charles Crawford Cox v. DHHS | 03 DHR 1546 | Lassiter | 07/07/04 | |
| Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC | 03 DHR 1553 | Chess | 06/02/04 | |
| Lativia L. Gibbs v. DHHS, Div. of Child Development | 03 DHR 1746 | Smith | 07/23/04 | |
| Rebecca Stephens Short v. DHHS, Div of Facility Services | 03 DHR 1806 | Conner | 06/11/04 | |
| Loretta Kaye Dulakis v. DHHS, Div. of Facility Services | 03 DHR 1848 | Wade | 08/20/04 | |

CONTESTED CASE DECISIONS

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|--|-------------|----------|----------|
| Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA | 03 DHR 2377 | Conner | 07/19/04 |
| Mooresville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center | 03 DHR 2404 | Conner | 06/08/04 |
| Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development | 03 DHR 2445 | Gray | 06/15/04 |
| John Michael Thompson v. DHHS, DFS | 04 DHR 0046 | Lassiter | 07/27/04 |
| Alisa Hodges Yarborough v. DHHS, DFS | 04 DHR 0176 | Elkins | 07/19/04 |
| LaDunna K. Brewington v. DHHS, Div of Medical Assistance | 04 DHR 0192 | Mann | 06/09/04 |
| Martha Williams, Kidtz Town v Div of Child Development | 04 DHR 0200 | Elkins | 06/11/04 |
| Mary P. Daniels v. DHHS | 04 DHR 0232 | Gray | 08/09/04 |
| Eula P. Street v. DHHS, DFS | 04 DHR 0332 | Elkins | 07/14/04 |
| Donnell Williams v. Harnet County DSS | 04 DHR 0334 | Conner | 06/28/04 |
| Terry William Waddell v. Medicaid/NC Health Choice | 04 DHR 0335 | Mann | 06/04/04 |
| Paula Una Simon v. DHHS | 04 DHR 0386 | Chess | 09/10/04 |
| Nathan E. Lang vs DHHS | 04 DHR 0439 | Conner | 06/23/04 |
| Phyllis S. Weaver v. DHHS | 04 DHR 0457 | Conner | 07/19/04 |
| Bervin D. Pearson Sr. v. DHHS, Broughton Hospital | 04 DHR 0476 | Morrison | 09/09/04 |
| Tracy M. Anderson v. DHHS, Div. of Facility Services | 04 DHR 0501 | Conner | 09/14/04 |
| Ray J. Bobbitt v. Nash County Dept. of Social Services | 04 DHR 0529 | Elkins | 07/13/04 |
| Connie Watt Redice v. DHHS | 04 DHR 0546 | Lassiter | 06/29/04 |
| Edrica Mekoyo v. DHHS, Div. of Facility Services | 04 DHR 0560 | Gray | 09/17/04 |
| Emelie Kashangura v. DHHS, DFS | 04 DHR 0602 | Elkins | 07/14/04 |
| Sabrina Betts v. NC Health Personnel Registry | 04 DHR 0644 | Lassiter | 06/02/04 |
| Amy Hensley v. DHHS | 04 DHR 0696 | Elkins | 09/01/04 |
| Tanisha Mitchell v. DHHS, Div. of Facility Services | 04 DHR 0787 | Mann | 06/23/04 |
| Stacey Curtis v. Dorothea Dix Hospital | 04 DHR 0791 | Lassiter | 09/01/04 |
| Fox's Tot, Inc., Connie Fox v. DHHS | 04 DHR 0881 | Elkins | 07/20/04 |
| Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section | 04 DHR 0974 | Conner | 08/10/04 |
| New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS | 04 DHR 1112 | Lassiter | 08/18/04 |
| Roberta Bell v. DHHS, Div of Medical Assistance | 04 DHR 1134 | Wade | 09/15/04 |
| Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC | 04 DHR 1136 | Elkins | 09/14/04 |
| Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Med. Assistance | 04 DHR 1166 | Gray | 09/03/04 |

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

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|--|-------------|----------|----------|
| Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm | 03 DOJ 1067 | Lassiter | 06/15/04 |
| Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm | 03 DOJ 1702 | Conner | 05/10/04 |
| Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission | 03 DOJ 2354 | Mann | 07/19/04 |
| Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission | 03 DOJ 2355 | Mann | 07/19/04 |
| Addie Joanne Foreman v. Private Protective Services Board | 03 DOJ 2405 | Elkins | 08/26/04 |
| Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm. | 03 DOJ 2431 | Conner | 06/22/04 |
| Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm. | 04 DOJ 0062 | Chess | 08/23/04 |
| Bernard Cotton v. DOJ | 04 DOJ 0063 | Chess | 06/03/04 |
| Linnell Davis, Jr. v. Private Protective Services Board | 04 DOJ 0299 | Elkins | 08/26/04 |
| Jason Oneil Rice v. Sheriffs' Education & Training Standards Commission | 04 DOJ 0318 | Mann | 06/24/04 |
| Guy Wesly Prevette v. Criminal Justice Educ. & Training Standards Comm. | 04 DOJ 0511 | Chess | 07/08/04 |
| Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm | 04 DOJ 0514 | Gray | 07/15/04 |
| Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm | 04 DOJ 0658 | Gray | 09/20/04 |
| Robert Dustin Bryan v. Private Protective Services Board | 04 DOJ 0708 | Gray | 09/16/04 |
| Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm | 04 DOJ 0829 | Mann | 07/28/04 |
| Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm | 04 DOJ 0830 | Elkins | 08/24/04 |

DEPARTMENT OF TRANSPORTATION

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|--|-------------|-------|----------|
| Harrison Holdings, LLC d/b/a Ultimate Imports v. Dept. & Comm. Of Motor Vehicles | 04 DOT 0452 | Chess | 09/13/04 |
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DEPARTMENT OF STATE TREASURER

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|---|-------------|--------|----------|
| Mary Pender v. DOT, Retirement Systems Division | 04 DST 0027 | Conner | 07/23/04 |
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DEPARTMENT OF PUBLIC INSTRUCTION

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|--|-------------|----------|----------|-----------|-----|
| Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker | 02 EDC 2310 | Lassiter | 06/01/04 | 19:01 NCR | 153 |
|--|-------------|----------|----------|-----------|-----|

ENVIRONMENT AND NATURAL RESOURCES

| | | | |
|---|-------------|--------|----------|
| Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality | 00 EHR 1706 | Gray | 06/18/04 |
| J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality | 00 EHR 2116 | Gray | 06/04/04 |
| Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection | 01 EHR 1558 | Mann | 06/17/04 |
| Friends of the Green Swamp, et al, v. DENR, Div. of Water Quality and Riegel Ridge, LLC, and Waste Management of Carolinas, Inc | 03 EHR 0058 | Conner | 08/26/04 |
| Old Beau Golf Club v. DENR | 03 EHR 1260 | Conner | 07/28/04 |

CONTESTED CASE DECISIONS

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|--|--------------------------|----------|----------|
| Sandy Mush Properties, Inc v. DENR, Div of Air Quality | 03 EHR 1411 | Conner | 06/28/04 |
| Ronald Frye v DENR | 03 EHR 1636 | Gray | 06/23/04 |
| Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an unincorporated association), Alberta Anderson, Cameron Anderson, Jean Black, Richard Black, Walter S. Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith, Jr., and Vassilia Smith v. Div of Water Quality of DENR And Piedmont Triad Airport Authority | 03 EHR 1664 | Gray | 09/08/04 |
| Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries | 03 EHR 2248 | Chess | 06/10/04 |
| Winston N. Cahoon v. DENR | 03 EHR 2305 | Lassiter | 07/01/04 |
| Jimmy Mathis, Mathis Pump & Well v. DENR | 03 EHR 2336 | Wade | 05/25/04 |
| James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate | 04 EHR 0073 ¹ | Wade | 08/13/04 |
| R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond | 04 EHR 0150 ¹ | Wade | 08/13/04 |
| Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision | 04 EHR 0612 | Wade | 05/25/04 |
| Brookside Montessori School, Inc v. DENR, Div. of Environmental Health | 04 EHR 1219 | Gray | 08/27/04 |
| <u>DEPARTMENT OF INSURANCE</u> | | | |
| Speros J. Fleggas vs. DOI | 04 INS 0251 | Elkins | 06/10/04 |
| <u>MISCELLENOUS</u> | | | |
| Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services | 04 MIS 0146 | Gray | 06/18/04 |
| O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6, 7,8,9,10 | 04 MIS 0682 | Elkins | 06/22/04 |
| Larry Yancey v. State Bar Grievance Com., Dept of Justice | 04 MIS 0891 | Morrison | 07/27/04 |
| Larry Yancey v. State Bar Grievance Com., Dept of Justice | 04 MIS 0892 | Morrison | 07/27/04 |
| Larry Yancey v. Durham Housing Authority, City of Durham, State of NC | 04 MIS 0893 | Morrison | 07/27/04 |
| Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC | 04 MIS 0894 | Morrison | 07/27/04 |
| Larry Yancey v. Durham Dept. of Social Services, State of NC | 04 MIS 0895 | Morrison | 07/27/04 |
| <u>OFFICE OF STATE PERSONNEL</u> | | | |
| Kathy M Sledge v. DOC | 02 OSP 2117 | Conner | 08/03/04 |
| Pearl A. Wilkins v. NCSU | 03 OSP 0400 | Gray | 07/26/04 |
| Phillip Harris v. Dept. of Juvenile Justice & Delinquency Prevention | 03 OSP 0836 | Gray | 09/17/04 |
| James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro | 03 OSP 2451 | Elkins | 06/01/04 |
| James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro | 03 OSP 2452 | Elkins | 06/01/04 |
| James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro | 03 OSP 2453 | Elkins | 06/01/04 |
| Terry H. Mitchell v. Elizabeth City State University | 04 OSP 0015 | Conner | 07/23/04 |
| Miracle L. Smith v. NC State Highway Patrol | 04 OSP 0039 | Gray | 07/14/04 |
| Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs | 04 OSP 0194 | Mann | 06/09/04 |
| Jerry William Wiley v. Div of Public Health and DHHS | 04 OSP 0210 | Elkins | 06/23/04 |
| Barbara Hoffner v. DOC, Div of Prisons, Central Prison | 04 OSP 0415 | Chess | 06/17/04 |
| Jeff Nichols v. DOC | 04 OSP 0419 | Conner | 06/29/04 |
| Phyllis Holt v. UNC Chapel Hill | 04 OSP 0486 | Chess | 06/01/04 |
| John V. Smith v. NCSU | 04 OSP 0505 | Chess | 06/17/04 |
| David Earl Beasley v. NCSU | 04 OSP 0513 | Gray | 08/27/04 |
| Mark A. Boyce v. Dept. of Commerce | 04 OSP 0543 | Gray | 07/06/04 |
| Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown | 04 OSP 0582 | Wade | 06/24/04 |
| Bernadine Ralph v. O'Berry Center | 04 OSP 0706 | Lassiter | 06/29/04 |
| James A. Ray v. UNC at Greensboro, Facility Services | 04 OSP 0751 | Elkins | 07/14/04 |
| Gwendolyn Robertson Horton v. DHHS | 04 OSP 0792 | Morrison | 07/26/04 |
| Lekisha Branch Thorpe v. The Whitaker School | 04 OSP 0923 | Morrison | 09/09/04 |
| Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab | 04 OSP 0930 | Lassiter | 08/06/04 |
| Veronica J. Johnson v. SOS | 04 OSP 0961 | Morrison | 07/23/04 |
| Gregory Tabron v. John Umstead Hospital | 04 OSP 1014 | Lassiter | 07/26/04 |
| <u>UNC HOSPITALS</u> | | | |
| Carrie Ann Sykes v. Chapel Hill Hospital | 04 UNC 0245 | Elkins | 06/25/04 |
| Danielle Catoe v. UNC Hospitals | 04 UNC 0291 | Elkins | 06/25/04 |
| Rex A. Coughenour v. UNC Hospitals | 04 UNC 0306 | Elkins | 06/22/04 |
| P. Nettles v. UNC Hospitals | 04 UNC 0393 | Morrison | 07/23/04 |
| Vanessa Bailey v. UNC Hospitals | 04 UNC 0440 | Conner | 08/09/04 |
| Dennis McCuller v. UNC Hospitals | 04 UNC 0458 | Chess | 08/02/04 |
| Joe Hatcher v. UNC Hospitals | 04 UNC 0480 | Morrison | 07/23/04 |
| Cattrual Heggins v. UNC Hospitals | 04 UNC 0496 | Chess | 08/09/04 |
| Tammy Bottoms v. UNC Hospitals | 04 UNC 0502 | Elkins | 07/21/04 |
| Sandra Lee Petty v. UNC Hospitals | 04 UNC 0522 | Chess | 07/23/04 |
| Thomas Sherman Tate v. UNC Hospitals | 04 UNC 0538 | Chess | 06/15/04 |
| Tracy Lane v. UNC Hospitals | 04 UNC 0601 | Gray | 07/23/04 |
| Carl Graves, Jr. v. UNC Hospitals | 04 UNC 0613 | Wade | 09/21/04 |

CONTESTED CASE DECISIONS

Chris Oduok v. UNC Hospitals
Pamela L. Chevalier v. UNC Hospitals

04 UNC 0760 Morrison
04 UNC 0773 Morrison

07/26/04
07/26/04

1 Combined Cases