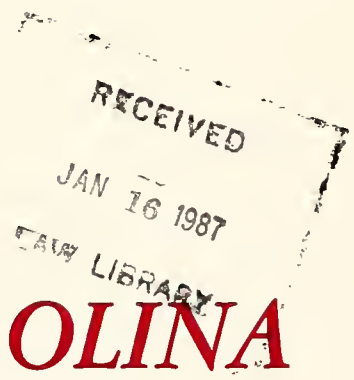


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# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: JANUARY 15, 1987**

**Volume 1 • Issue 10 • Pages 671-761**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604. Attn: Subscriptions.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER  
Publication Deadlines and Schedules  
(April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	* Earliest Effective Date
12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87
04/15/87	03/26/87	04/02/87	05/15/87	06/14/87	09/01/87
05/15/87	04/27/87	05/04/87	06/14/87	07/14/87	10/01/87
06/15/87	05/26/87	06/02/87	07/15/87	08/14/87	11/01/87
07/15/87	06/25/87	07/02/87	08/14/87	09/13/87	12/01/87
08/14/87	07/27/87	08/03/87	09/13/87	10/13/87	01/01/88
09/15/87	08/26/87	09/02/87	10/15/87	11/14/87	02/01/88
10/15/87	09/25/87	10/02/87	11/14/87	12/14/87	03/01/88
11/16/87	10/27/87	11/03/87	12/16/87	01/15/88	04/01/88
12/15/87	11/23/87	12/02/87	01/14/88	02/13/88	05/01/88
01/15/88	12/28/87	01/04/88	02/14/88	03/15/88	06/01/88
02/15/88	01/26/88	02/02/88	03/16/88	04/15/88	07/01/88
03/15/88	02/24/88	03/02/88	04/14/88	05/14/88	08/01/88

\* The "Earliest Effective Date" was considering the agency files the rules with The Administrative Rules Review Commission the same calendar month as adoption by agency and ARRC approves the rules at the next calendar month meeting.

### CORRECTIONS

CORRECTION OF PROPOSED AMENDMENT TO 10 NCAC 42C .2002(2) AS PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 1, ISSUE 9, ON PAGE 620. THE PROPOSED AMENDMENT SHOULD READ:

- (2) The qualifications of the administrator and co-administrator referenced in Paragraphs (3), (7), (8), and ~~(12)~~ (9) of Rule .2001 of this Subchapter shall apply to the supervisor-in-charge. The supervisor-in-charge must meet a minimum educational requirement by being at least a high school graduate or certified under the G.E.D. Program or by passing an alternative examination established by the Department of Human Resources. This educational requirement shall supply only to ~~supervisors-in-charge approved after January 1, 1977.~~ Documentation that these qualifications have been met must be on file in the home prior to employing the supervisor-in-charge;

CORRECTION OF PROPOSED AMENDMENT TO 10 NCAC 42D .1603(b) AS PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 1, ISSUE 9, ON PAGE 630. THE PROPOSED AMENDMENT SHOULD READ:

- (b) There must be at least 12 rehearsals of the fire evacuation fire/disaster plan each year (four times on each shift). with at least one total evacuation of the building every six months (one on first and second shifts). All third shift personnel are to participate in the two total evacuations.

EXECUTIVE ORDER

EXECUTIVE ORDER NUMBER 30

AMENDMENT TO EXECUTIVE ORDER  
NUMBER ONE (1)

Under Executive Order Number 1 issued on January 31, 1985, the North Carolina Board of Ethics was established to administer the Governor's requirements for public disclosure, ethics, and conflicts of interest. It has been made to appear that in order to properly perform its duties, the Board of Ethics should be enlarged to seven (7) members.

NOW, THEREFORE, IT IS  
ORDERED:

Section 2 on page two (2) of Executive Order Number One dated January 31, 1985, is amended to read as follows:

Section 2. North Carolina

Board of Ethics. There is hereby established the North Carolina Board of Ethics consisting of seven (7) persons to be appointed by the Governor to serve at his pleasure. The Governor shall, from time to time, designate one of the members as Chairman. The members shall receive no compensation, but shall receive reimbursement for any necessary expenses incurred in connection with the performance of their duties pursuant to General Statute 138-5. The Board of Ethics shall not be considered a public office for the purpose of dual office holding.

Each and every other section of Executive Order Number One dated January 31, 1985, is continued in full force and effect.

Done in Raleigh, this the  
15th day of December, 1986.

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of ROBERT ROOSEVELT REILLY, JR., now, by virtue of the authority vested in me by law I do hereby appoint him Administrative Law Judge and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 2nd day of January 1987.

s/Robert A. Melott  
Chief Administrative Law Judge  
Director

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice  
Washington, D.C. 20530

WBR:SHR:gmh  
DJ 166-012-3  
R2399

December 15, 1986

Michael Crowell, Esq.  
Tharrington, Smith & Hargrove  
P. O. Box 1151  
Raleigh, NC 27602

Dear Mr. Crowell:

This refers to the five-seat special election for the Onslow County Board of Education, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on October 14, 1986; supplemental information was received on October 20, November 25 and December 8, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

At the outset, we believe that it may be useful to comment briefly on the effect of the objection interposed on May 12, 1986, to the use of residency districts in the at-large election system established by Chapter 525 (1977). As we stated in the objection letter, "the effect of the objection by the Attorney General is to make the method of election for the county [school] board described in Chapter 525 (1977) legally unenforceable." See e.g., Connor v. Waller, 421 U.S. 656 (1975); on Pitts v. Busbee, 511 F. 2d 126 (5th Cir. 1975); Terrazas v. Clements, 537 F. Supp. 514, 520 (N.D. Tex. 1982). But for the illegal implementation of that system, there would have been four board members elected at large and as a group without regard to residence in 1980 and 1984 and three board members elected in the same manner in 1978, 1982 and 1986. Thus, in our view the objection affected the elections held for all board members pursuant to the Chapter 525 system.

We note further that the five-seat special election proposal contained in the instant submission, as well as the seven-seat special election plan, which was precleared on September 15, 1986, are responses to our earlier objection. As with the seven-seat plan, the Attorney General does not interpose any objection to the changes occasioned by the five-seat plan. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

NOTICE OF PETITIONS  
FOR  
MUNICIPAL INCORPORATION

[G.S. 150B-63(d1) requires publication of Notice that a Petition for Incorporation has been filed with the Joint Legislative Commission on Municipal Incorporations].

A petition under G.S. 120-163 has been filed with the Joint Legislative Commission on Municipal Incorporations seeking incorporation of a city to be known as Buffalo Lakes in Harnett County.

This notice is published as required by G.S. 120-165(a).

Gerry F. Cohen  
Counsel to the Commission

## PROPOSED RULES

### TITLE 1 - ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to repeal regulations cited as 1 NCAC 4H .0101-.0102; .0202-.0205; .0208; amend 1 NCAC 4H .0103-.0104; .0206.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143-340(21), (22).

The public hearing will be conducted at 9:00 a.m. on February 18, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the Proposed Regulations by writing or calling (733-7232).

### CHAPTER 4 - AUXILIARY SERVICES

#### SUBCHAPTER 4H - SECURITY

#### SECTION .0100 - GENERAL PROVISIONS

.0101 ORGANIZATION (REPEALED)

.0102 LOCATION (REPEALED)

.0103 RESPONSIBILITIES AND SCOPE

State government security Capitol Police is responsible for the protection and security of state-owned and leased property located in the City of Raleigh and Wake County to administer and enforce laws, rules and regulations thereto; to provide normal police functions such as traffic control, patrolling state parking lots, preventive enforcement, investigation of crimes committed on state property and detection of fires, power failure, malfunctioning equipment, and to report these things to appropriate officials.

.0104 AUTHORITY

Security Police officers of state government security State Capitol Police are appointed as

special police officers and have the power of arrest in the City of Raleigh and on state property located in Wake County. These Security Police Officers receive the minimum training as required by Criminal Justice Training and Standards Council and are certified as law enforcement officers.

#### SECTION .0200 - FUNCTIONS

.0202 CRIME PREVENTION PROGRAM (REPEALED)

.0203 SECURITY SURVEYS (REPEALED)

.0204 LIAISON (REPEALED)

.0205 POLICE INFORMATION NETWORK (PIN) (REPEALED)

.0206 TRAFFIC ACCIDENTS

All traffic accidents occurring on state property must be reported to State government security Capitol Police. All accidents will be investigated. Those accidents estimated to have damage over two four hundred dollars ~~(\$200.00)~~ (\$400.00) will be reported to Division of Motor Vehicles by the investigating agency. The reports of those accidents with damage less than two four hundred dollars ~~(\$200.00)~~ (\$400.00) will be filed with State government security Capitol Police. Copies of accident reports will be furnished to individuals involved and their insurance companies upon request.

.0208 PROPERTY GUARDS (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend regulations cited as 1 NCAC 6B .0206-.0208; .0306; .0512; .0605; and .0607.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143-341(4)d., f.; 146-25.1; 146-6; 146-11 & 12.

The public hearing will be conducted at 3:00 p.m. on February 18, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, North Carolina 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the Proposed Regulations by writing or calling (733-7232).

## CHAPTER 6 - STATE PROPERTY AND CONSTRUCTION

### SUBCHAPTER 6B - REAL PROPERTY

#### SECTION .0200 - ACQUISITION OF REAL PROPERTY

##### .0206 LEASE NOT EXCEEDING \$5,000; TERM NOT EXCEEDING THREE YEARS

Leases where the annual rental does not exceed three five thousand dollars (~~\$3,000~~) (\$5,000) or the term does not exceed three years may be negotiated and signed as provided for in the by Council of State resolutions, dated August 9, 1972, January 8, 1974, and July 1, 1975, February 1, 1977 and August 2, 1977. A copy of the executed lease must be forwarded to the Division of State Property. Departments not empowered to act by these resolutions must follow the procedures outlined in Regulations .0205 and .0207 of this Section for all leases involving annual rental not in excess of seven twelve thousand five hundred dollars (~~\$7,500~~) (\$12,000).

##### .0207 LEASE NOT EXCEEDING \$12,000/TERM THREE YEARS

If the annual rental does not exceed seven twelve thousand five hundred dollars (~~\$7,500~~) (\$12,000) and the term does not exceed three years, the steps listed are followed:

- (1) Agency forward P0-1 (Acquisition of Real Property), P0-28 (Proposal to Lease to State), floor plan, and other available pertinent information to the Division of State Property;
- (2) Upon receiving the proper request, the Division of State Property will proceed to investigate the space needs and rental terms;
- (3) Upon completion of the investigation, the Division of State Property will either approve or reject the proposal;
- (4) If approved the proposal will be referred to:
  - (a) the State Budget Office

- for verification of funding;
- (b) the Attorney General's Office for preparation of the lease agreement;
- (c) the Secretary of Administration or designee for signature.

The Division of State Property may delegate authority to certain agencies as it deems warranted to enter into leases without prior approval of the secretary of administration. Upon granting such authority in writing, the property office will include a list of rules that must be followed by the agency when handling such transactions.

##### .0208 LEASE MORE THAN \$12,000 OR MORE THAN THREE YEARS

For space needs where the annual rental exceeds seven twelve thousand five hundred dollars (~~\$7,500~~) (\$12,000) or the term exceeds three years, Form P0-26 provides the basic steps to follow in the leasing procedures required by G.S. 146-25.1. Additional guidance is provided below:

- (1) Specifications. The agency prepares a Form P0-27. This serves as a guideline for supplying information which a prospective lessor needs to make a lease proposal.
- (2) Advertising. Newspaper ads will be prepared by the Division of State Property and will be forwarded to the agency for submission to a newspaper of general circulation in the "Legal Notices" section or other appropriate section. The ad must run for at least five consecutive days and give a specific cut-off date for receiving proposals. The cut-off date must be at least seven days after the last day the ad is run.
- (3) Proposals. All proposals should be submitted on Form P0-28 which includes the basic information that is necessary to evaluate and compare each proposal received. All proposals must be submitted directly to the Division of State Property prior to the time of cut-off.
- (4) Space Selection. After the location of desired space has been selected by the Division of State Property and reviewed by the agency, a Form P0-1 must be submitted by the agency to the Division of State Property requesting acquisition of the space. If

the low proposal is not selected, a statement of justification must be submitted also. If in order, the Division of State Property will present the matter to the Council of State for consideration. Space selections will be made in keeping with G.S. 146-23.1 regarding the acquisition by the state of buildings and space in buildings having historic, architectural or cultural significance.

#### SECTION .0300 - DISPOSITION OF REAL PROPERTY

##### .0306 BY LEASE

Any state agency desiring to dispose of real property by lease will first contact the Division of State Property to ascertain there is no state need. If it is determined that there is no state need, the agency may then dispose of such real property in keeping with the procedures noted in this Rule:

- (1) Where the annual rental does not exceed seven five thousand five hundred dollars ~~(\$7,500)~~ (\$5,000) or the term is not in excess of three years, disposition will be handled as follows:
  - (a) When any agency desires to dispose of real property by lease, it shall file with the Department of Administration Form P0-2 setting forth the facts relating to the proposed transaction.
  - (b) Upon receipt of the prescribed application, the Division of State Property shall investigate all aspects of the proposed transaction.
  - (c) If after investigation it is found by the Department of Administration that it is in the best interest of the state that the real property be disposed of by lease, proceedings for such disposition will then begin.
  - (d) After the terms of said disposition have been agreed upon, the matter will be referred to:
    - (i) The Office of the Attorney General for preparation of the lease;
    - (ii) Secretary of Administration or designee for signature.
- (2) Where the annual rental is more than seven twelve thousand five hundred dollars ~~(\$7,500)~~ (\$12,000) or the

term is in excess of three years, disposition will be handled as follows:

- (a) When any agency desires to dispose of real property by lease, it shall file with the Department of Administration Form P0-2 setting forth the facts relating to the proposed transaction.
- (b) Upon receipt of the prescribed application, the Department of Administration shall proceed to investigate all aspects of the proposed transaction.
- (c) If after investigation it is found by the Department of Administration that it is in the best interest of the state that the real property be disposed of by lease, proceedings for such disposition will then begin.
- (d) After the terms of said disposition have been agreed upon, the matter will be presented to the Council of State for approval.
- (e) After approval by the Council of State, the matter will be transferred to the Office of the Attorney General to draw the lease.
- (f) After lessor executes the lease it will be forwarded to the Governor and Secretary of State for signature.
- (g) The North Carolina State Department of Agriculture was empowered by Council of State Resolution of July 1, 1975 to enter into leases and contracts not exceeding 15 days for buildings and services on the State Fairgrounds.

The Division of State Property may delegate authority to certain agencies as it deems warranted to enter into leases without prior approval of the Secretary of Administration. Upon granting such authority in writing, the Property Office will include a list of rules that must be followed by the agency when handling such transactions.

#### SECTION .0500 - EASEMENTS TO FILL

##### .0512 FILLING BY LOCAL GOVERNMENTS

- (a) Easements to fill will be granted to local governments which are riparian owners, where the fill will serve the public interest and meets the requirements of .0506 of this Section.

(b) Consideration for the quitclaim deed to such raised land shall be the value of the land raised, less the cost to bulkhead and fill the subject land determined by the Department of Administration.

## SECTION .0600 - OTHER EASEMENTS OVER WATER

### .0605 STRUCTURES

(a) Piers or docks which provide riparian access to navigable waters are allowed and no easement is required. Such structures may be covered by a weatherproof shelter so long as the use of the sheltered area is in keeping with the provision of riparian access to the water. Riparian owners may construct piers or docks to gain access to navigable waters without an easement. Such structures may include a weatherproof shelter if the use of the shelter is in keeping with riparian access.

(b) An easement is required for any structure built over navigable waters other than those providing simple riparian access. Such easements will not be granted for structures or facilities that can be located over land. Examples of structures not allowed are: utility buildings, dwellings, hotels, restaurants, businesses, apartments, etc. Easements in lands covered by navigable waters are generally required for any structure built over navigable waters for purposes other than gaining riparian access. The Department of Administration may exempt from this provision structures deemed minor in their impact upon the public trust waters of the State. Examples of such exempt structures include boat ramps, duck blinds, small groins, and the like.

(c) Easements are not required for commercial fishing nets, fish offals, ramps, boathouses, piers, duck blinds, or other structures which are deemed, due to their nature and scope, not to warrant such easements by the Department of Administration. Easements in lands covered by navigable waters will be granted upon application to the Department of Administration for such purposes and upon such conditions as the Department of Administration may deem proper and in the public interest, with approval of the Governor and the Council of State.

### .0607 APPLICATION AND COST

Application must be filed with the Division of State Property for such easements. The administrative charge is one hundred dollars (\$100.00) or other reasonable administrative charges set by the Department of Administration, and must accompany the application. A plat of the proposed project or other description deemed satisfactory by the Division of State Property must accompany the application.

(a) Application must be filed with the Division of State Property of the Department of Administration for such easements. The administrative charge is one hundred dollars (\$100.00) or other reasonable administrative charges set by the Department of Administration, and must accompany the application. A plat of the proposed project or other description deemed satisfactory by the Division of State Property must accompany the application.

(b) The department may, with the approval of the Governor and Council of State, establish consideration for easements in addition to the administrative charge.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to repeal regulations cited as 1 NCAC 19 .0101; .0102; .0104; .0105; and .0201; .0202; .0301; .0302; amend 1 NCAC 19 .0103.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143B-385; 143B-388; 143B-418; 143B-419.

The public hearing will be conducted at 11:00 a.m. on February 18, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the Proposed Regulations by writing or calling (733-7232).

## CHAPTER 19 - STATE YOUTH ADVISORY COUNCIL

SECTION .0100 - STATE YOUTH  
COUNCIL

.0101 ROLE OF COUNCIL  
(REPEALED)

.0102 STAFF SUPPORT (REPEALED)

.0103 ELECTION OF YOUTH  
MEMBERS

Election of 10 youth members of the Youth Advisory Council shall be held in May at the State Youth Council's annual convention. Five seniors and five juniors shall be elected.

Of the youth members elected under this Rule, the seniors shall serve for a term of one year, the juniors shall serve for two.

Two basic guidelines are suggested for the election of youth members:

- (1) Youth members are to be representative of:
  - (a) organized youth groups in the state,
  - (b) geographic areas of the state,
  - (c) economic and ethnic groups of the state.
- (2) Prospective youth members are to have demonstrated or have potential leadership qualities.

Youth members elected in May shall have the privilege of attending meetings of the council and assignment to committees with the right of discussion but without the right of vote until their terms of office begin in July.

(a) Six of the 10 youth members are elected by the State Youth Council during their annual convention. The remaining four youth members are appointed by the Governor and should be representative of high school youth organizations (4-H, Scouts, NAACP Youth Council, Vocational Industrial Clubs of America, N.C. Native American Youth Organization, etc.). Youth members are those members currently enrolled in a public or private high school.

(b) The Chair of the State Youth Council serves in the capacity of Vice-Chair for the Youth Advisory Council.

.0104 STAFF ORGANIZATION  
(REPEALED)

.0105 STATE YOUTH COUNCIL  
(REPEALED)

.0201 ORGANIZATION (REPEALED)

.0202 LOCATION AND OFFICE

HOURS (REPEALED)

.0301 FUNCTIONS AND DUTIES  
(REPEALED)

.0302 STAFF ORGANIZATION  
(REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to repeal regulations cited as 1 NCAC 27 .0101-.0102; .0201-.0202.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143B-414; 143B-416.

The public hearing will be conducted at 1:00 p.m. on February 18, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the Proposed Regulations by writing or calling (733-7232).

CHAPTER 27 - GOVERNOR'S ADVOCACY  
COUNCIL ON CHILDREN & YOUTH

SECTION .0100 - LOCATION AND  
ORGANIZATION

.0101 LOCATION (REPEALED)

.0102 ORGANIZATION (REPEALED)

SECTION .0200 - DUTIES AND  
AUTHORITIES

.0201 DUTIES (REPEALED)

.0202 ACCESS TO INFORMATION  
(REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend regulations cited as 1 NCAC 35 .0202; .0302.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143B-10; 147-62.

The public hearing will be conducted at 10:00 a.m. on

February 19, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, NC 27611.

**Comment Procedures:** Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 W. Jones Street, Raleigh, NC 27611 (919) 733-7232.

## CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

### SECTION .0200 - ELIGIBLE ORGANIZATIONS

.0202 CRITERIA FOR ACCEPTANCE  
Organizations must meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) The organization must be licensed to solicit funds in North Carolina.
- (2) Must be directed by an active Board of Directors, which meets regularly and whose members serve without compensation.
- (3) Have a 501C(3) tax exempt status for both the IRS and N. C. tax purposes.
- (4) Must prepare and make available to the general public an annual financial report, which is certified by an independent public accountant.
- (5) If fundraising and administrative expenses are in excess of 25 percent of total revenue, must demonstrate to the satisfaction of the S.E.C.C. that those expenses for this purpose are reasonable under all the circumstances of the case.
- (6) Must certify that all publicity and promotional activities are truthful and non-deceptive.
- (7) Must agree to the confidentiality of the contributor list, and must promise no unauthorized use of this list.
- (8) Must permit no payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising, and permit no paid solicitations of the public.

- (9) Must have a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin or physical or mental handicap for clients of the agency, employees of the agency and members of the governing board. Agencies which have been organized along religious lines, or which are organized to serve persons of a particular sex or race may be considered for eligibility if a bona fide purpose for organizing along such lines can be shown.

- (10) Must provide benefits or services within the local community, meaning that employees in the solicitation area or their families should be able to receive services from the agency within a reasonable distance, or receive benefits from voluntary agencies. Examples of services are:
- (a) research and education in the health and welfare or education fields;
  - (b) family and child care services;
  - (c) protective services for children and adults;
  - (d) services for children and adults in foster care;
  - (e) services related to the management and maintenance of the home;
  - (f) day care services for adults and children;
  - (g) transportation services, information referral and counseling services;
  - (h) the preparation and delivery of meals;
  - (i) adoption services;
  - (j) emergency shelter care and relief services;
  - (k) safety services;
  - (l) neighborhood and community organization services;
  - (m) recreation services;
  - (n) social adjustment and rehabilitation services;
  - (o) health support services; or
  - (p) a combination of services designed to meet the needs of special groups such as the elderly or handicapped.
- However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet other eligibility criteria, may be accepted for participation in the campaign.
- (10) Eligibility for

participation in the campaign shall be limited to non-partisan, non-profit charitable organizations providing traditional health, welfare or educational services to state employees or their families within the statewide solicitation area. Employees or their families should be able to receive services from the organization. The services must consist of care, research or education in the fields of human health, social adjustment, or rehabilitation. Additional services may include relief during times of natural disasters or other emergencies as well as assistance to the needy in the form of food, clothing and shelter.

As previously set forth, an organization selected by the S.E.C.C. Advisory Committee as a participant in the Combined Campaign must meet the Acceptance Criteria. In addition to the specified criteria, the S.E.C.C. Advisory Committee possesses the authority to consider additional related factors. Such factors given consideration by the committee include but are not limited to present need, duplication of existing services provided to state employees by the State of North Carolina, programs, goals and initiatives of State government and the necessity to limit participation of organizations to a reasonable and manageable number.

#### SECTION .0300 - APPLICATION PROCESS AND SCHEDULE

##### .0302 RESPONSE

All applicants will be notified of their acceptance or rejection within 30 days of the closing deadline. Rejections may shall be appealed to the campaign director within 30 days of receipt of the notice of rejection but Response by the campaign director to the appeal will be made within a reasonable and timely manner. An appeal will not be allowed to delay the start of the campaign.

#### TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Gasoline and Oil Inspection Board intends to amend regulations cited as 2

NCAC 42 .0102;  
.0201(a),(b),(c),(d),(f) and  
(g); .0401(a).

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S.  
119-26; 119-27; 150B-14.

The public hearing will be conducted at 10:00 a.m. on March 17, 1987 at Board Room, Agriculture Bldg., 1 W. Edenton Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to N. David Smith, Secretary of the North Carolina Gasoline and Oil Inspection Board, P.O. Box 27647, Raleigh, North Carolina 27611.

#### CHAPTER 42 - GASOLINE AND OIL INSPECTION BOARD

##### SECTION .0100 - PURPOSE AND DEFINITIONS

##### .0102 DEFINITIONS

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions for fuel oil, gasoline, diesel fuel, and kerosene shall be those as set forth in D-396, D-439, D-975, and D-3699, respectively, as listed in the 1985 Annual Book of ASTM Standards, published by ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103. In addition, gasoline (leaded and unleaded) which contains oxygenates not exceeding the limits set forth in the U.S. Environmental Protection Agency's "Substantially Similar" Rule, Section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545(f)(1)) shall be considered the same as gasoline applicable in this Chapter are as follows:

For purposes of this Chapter:

- (1) "ASTM" means the American Society for Testing and Materials.
- (2) "Anhydrous denatured ethyl alcohol (ethanol)" means nominal 200 proof ethanol to which has been added a maximum of 5 five volumes of approved denaturant(s) to 100 volumes of ethanol and containing not more than 1.25 percent water by weight as determined by ASTM Test Method D-203.
- (3) "Approved denaturant(s)"

- means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms and the Director.
- (4) "Board" means the Gasoline and Oil Inspection Board.
- (5) "Cetane number" means the relative ignition quality of diesel fuels by the ASTM Cetane Method D-613.
- (6) "Director" means the director of the Consumer Standards Division of the North Carolina Department of Agriculture.
- (7) "EPA" means the United States Environmental Protection Agency.
- (8) "Gasoline-oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to the following designations:
- (a) Gasohol meaning any motor fuel containing a nominal 10 volume percent anhydrous denatured ethanol and 90 volume percent unleaded gasoline, regardless of other name, label, or designation.
- (b) Leaded gasohol meaning any motor fuel containing a nominal 10 volume percent anhydrous denatured ethanol and 90 volume percent leaded gasoline, regardless of other name, label, or designation.
- (c) Any gasoline-oxygenate blend which meets the EPA's "Substantially Similar" rule.
- (d) Any gasoline-oxygenate blend for which there is an existing Clean Air Act waiver issued by EPA.
- (e) Any gasoline-oxygenate blend which is not subject to EPA fuel requirements, but for which approval has been granted by the Board for sale in North Carolina.
- (9) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of same: propane, propylene, butanes (normal or iso-butane), and butylenes.
- (10) "Motor Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Motor Method (D-2700).
- (11) "Octane Index" means the number obtained by adding the research octane number and the motor octane number and dividing the sum by two.
- (12) "Oxygenate" means an oxygen containing, ashless organic compound, which contains oxygen such as an alcohol or an ether, which may be used as a fuel or a fuel supplement.
- (13) "Oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates. This definition includes, but is not limited to, gasoline-oxygenate blends under the following designations:
- (a) "Group I" means gasoline-oxygenate blends defined in (i) through (iv) of this Subparagraph:
- (i) "Gasohol" means any motor fuel containing a nominal 10 volume percent anhydrous denatured ethanol and 90 volume percent unleaded gasoline, regardless of other name, label, or designation.
- (ii) "Leaded gasohol" means any motor fuel containing a nominal 10 volume percent anhydrous denatured ethanol and 90 volume percent leaded gasoline, regardless of other name, label, or designation.
- (iii) Any gasoline-methanol blend containing not more than 5 volume percent methanol which also includes an equal volume of butanol or higher molecular weight alcohol.
- (iv) Any gasoline-oxygenate blend not otherwise defined in this Chapter and having a maximum oxygen content not greater than the oxygen content of a blend of 90 volume percent gasoline, 5 volume percent methanol, and 5 volume percent butanol.
- (b) "Group II" means only gasoline-oxygenate blend which does not meet the definition of a Group I fuel.
- (14) "Qualitative word or term" means any word or term used in a brand name which by definition or customary usage indicates a level of quality, classification, grade, or designation.
- (15) "Research Octane

Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Research Method (D-2699).

(16) "Substantially Similar" rule means the U.S. Environmental Protection Agency's "Substantially Similar" rule, Section 211(f)(1) of the Clean Air Act [42 U.S.C. 7545(f)(1)].

(14) (17) "Total alcohol" means the aggregate total in volume percent of all alcohol contained in any fuel defined in this Chapter.

(15) (18) "Total oxygenate" means the aggregate total in volume percent of all oxygenates contained in any fuel defined in this Chapter.

(16) "Unclassified motor fuel" means any motor fuel that does not meet the definition of any motor fuel defined in this Chapter.

(17) (19) "Unleaded" means any gasoline or blend of gasoline with oxygenates as defined in this Chapter containing not more than 0.05 grams lead per U.S. gallon (0.013 grams per liter) and 0.005 grams phosphorus per U.S. gallon (0.0013 grams per liter).

ASTM documents adopted by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting ASTM, 1916 Race Street, Philadelphia, PA 19103.

## SECTION .0200 - QUALITY OF LIQUID FUEL PRODUCTS

### .0201 STANDARD SPECIFICATIONS

(a) Gasoline and blends of gasoline with oxygenates as defined in this Chapter shall be visually free of undissolved water, sediment, and suspended matter, and shall be clear and bright at the ambient temperature or 70 degrees F. (21 degrees C.), whichever is higher. In addition to meeting all specification requirements as set forth in this Rule each fuel must be suitable for the intended use.

(1) Corrosion (A.S.T.M. D-130) shall be such that a clean copper strip submerged therein for three hours at a temperature of 122 degrees F. (50 degrees C.), will show a slight discoloration (Classification No. 1).

(2) Sulphur (A.S.T.M. D-1266)

content may not exceed 0.10 percent by weight for products designated as "unleaded" and may not exceed 0.15 percent by weight for all other products.

(3) Vapor Pressure and Vapor/Liquid Ratio

(A) Reid Vapor Pressure

(A.S.T.M. D-323) shall not exceed 15 psi (103 kPa) during January and December; 13.5 psi (93 kPa) during February, March, April, October and November; 11.5 psi (79 kPa) during May, June, July, and September; 10 psi (69 kPa) during August.

(B) Vapor/Liquid Ratio

(A.S.T.M. D-2533) shall be 20 to 1 maximum and shall be tested at 105 degrees F. (41 degrees C.) during January and December; 116 degrees F. (47 degrees C.) during February, March, April, October, and November; 124 degrees F. (51 degrees C.) during May, June, July, and September; 133 degrees F. (56 degrees C.) during August.

(i) A vapor pressure tolerance not exceeding one pound per square inch may be allowed for gasoline, leaded gasoline, and gasoline-oxygenate blends as determined by the ambient temperature procedure. A.S.T.M. D-323-79.

(ii) Vapor Liquid ratio specifications for gasoline, leaded gasoline, and gasoline-oxygenate blends will be waived pending development of appropriate test methods by ASTM and subsequent adoption by the board.

(iii) Reid vapor pressure and vapor liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for sale at retail prior to the effective date of the higher volatility classification.

(iv) Applications for

- temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;
- (4) Existing Gum (A.S.T.M. D-381) content may not exceed five milligrams per 100 milliliters;
- (5) Distillation Range (A.S.T.M. D-86) shall be as follows: not less than 10 percent evaporated at 149 degrees F. (65 degrees C.); not more than 50 percent evaporated at 170 degrees F. (77 degrees C.); except that for gasoline, leaded gasoline, and gasoline-oxygenate blends, not more than 50 percent shall be evaporated at 150 degrees F. (70 degrees C.); not less than 50 percent evaporated at 245 degrees F. (118 degrees C.); not less than 90 percent evaporated at 374 degrees F. (190 degrees C.); final boiling point not more than 437 degrees F. (225 degrees C.); residue shall not exceed 2 percent;
- (6) Octane Rating shall be at the octane index not less than the value certified on the brand name registration as required by 2 NCAG 42 .0500-
- (7) Lead content (A.S.T.M. D-3237) for fuels designated as unleaded shall not exceed 0.05 grams per U.S. gallon (0.013 grams per liter);
- (8) Phosphorus content

(A.S.T.M. D-3231) for fuels designated as unleaded shall not exceed 0.005 grams per U.S. gallon (0.0013 grams per liter);

(9) Oxygenate Content. Gas-liquid chromatographic procedures will be considered as official for the determination of oxygenate content.

(A) Gasohol and leaded gasohol shall contain 10 plus minus 0.5 volume percent anhydrous denatured ethanol.

(B) Blends of gasoline and alcohols and/or other oxygenates, not otherwise defined in this Chapter, may contain, as a maximum, the percentage and type of oxygenate as certified on the brand name registration as required by 2 NCAG 42 .0500 subject to compliance with other specifications as provided in this Subparagraph;

(10) Water Tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the lowest expected ambient temperature based on seasonal volatility classifications as specified in A.S.T.M. D-439.

(a) Gasoline shall conform to ASTM D-439-85a, "Standard Specification for Automotive Gasoline," with the following modifications:

(1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;

(2) Octane rating shall not be less than the octane index certified on the brand

name registration as required by 2 NCAC 42 .0500;

(3) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) Unclassified motor fuel shall be free of undissolved water, sediment, suspended matter and corrosive substances, and shall meet such specifications as may be established by the director. Such specifications shall be binding until the next meeting of the Board, at which time the Board shall establish specifications for the motor fuel.

(b) Gasoline-oxygenate blends shall conform to ASTM D-439-85a, "Standard Specification for Automotive Gasoline," with the following modifications:

(1) A vapor pressure tolerance not exceeding one pound per square inch may be allowed for gasohol, leaded gasohol, and gasoline-oxygenate blends as determined by the ambient temperature procedure, ASTM D-323-79;

(2) Vapor/liquid ratio specifications for gasohol, leaded gasohol, and gasoline-oxygenate blends will be waived pending development of appropriate test methods by ASTM and subsequent adoption by the board;

(3) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;

(4) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain

evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;

(5) Distillation Range (ASTM D-86) shall be the same as specified for gasoline in (a) of this Rule except the minimum temperature at 50 percent evaporated shall be 158 degrees F. (70 degrees C.);

(6) Octane rating shall not be less than the octane index certified on the brand name registration as required by 2 NCAC 42 .0500;

(7) Oxygenate Content. Gas-liquid chromatographic procedures will be considered as official for the determination of oxygenate content.

(A) Gasohol and leaded gasohol shall contain 10 plus/minus 0.5 volume percent anhydrous denatured ethanol.

(B) Gasoline-oxygenate blends not otherwise defined in this Chapter, may contain, maximum or minimum as appropriate, the percentage and type of oxygenates as certified on the brand name registration as required by 2 NCAC 42 .0500, subject to compliance with other specifications as provided in this Subparagraph;

(8) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the lowest expected ambient temperature based on seasonal volatility classifications as specified in ASTM D-439-85a.

(c) Diesel motor fuel must meet shall conform to ASTM D-975-81, "Standard Specification for Diesel Fuel Oils," with the following specifications modifications: for diesel motor fuel number

2-D, a minimum flash point (ASTM D-56) of 115 degrees F. (46 degrees C.).

(1) Number 1-D:

(A) Flash point (A.S.T.M. D-56): 100 degrees F. (38 degrees C.) minimum;

(B) Water and sediment (A.S.T.M. D-1796): 0.05 percent by volume maximum;

(C) Carbon residue on 10 percent residuum (A.S.T.M. D-524): 0.15 percent maximum;

(D) Distillation temperature at 90 percent evaporated (A.S.T.M. D-86): 550 degrees F. (288 degrees C.) maximum;

(E) Viscosity at 100 degrees F. (38 degrees C.) in Centistokes (A.S.T.M. D-445): 1.3 minimum and 2.4 maximum;

(F) Corrosion (A.S.T.M. D-130): When a clean copper strip is submerged for three hours at 122 degrees F. (50 degrees C.) discoloration shall not be darker than classification No. 3;

(G) Cetane number (A.S.T.M. D-613): 40 minimum;

(H) Sulphur (A.S.T.M. D-129 and D-1266): 0.50 percent by weight maximum;

(2) Number 2-D:

(A) Flash point (A.S.T.M. D-56): 115 degrees F. (46 degrees C.) minimum;

(B) Water and sediment (A.S.T.M. D-1796): 0.05 percent by volume maximum;

(C) Carbon residue on 10 percent residuum (A.S.T.M. D-524): 0.35 percent maximum;

(D) Distillation temperature at 90 percent evaporated (A.S.T.M. D-86): 640 degrees F. (338 degrees C.) maximum;

(E) Viscosity at 100 degrees F. (38 degrees C.) in Centistokes (A.S.T.M. D-445): 1.9 minimum; 4.1 maximum;

(F) Corrosion Test (A.S.T.M. D-130): When a clean copper strip is submerged therein for a period of three hours at a temperature of 122 degrees F. (50 degrees C.) the discoloration shall be no darker than classification No. 3;

(G) Cetane number (A.S.T.M. D-613): 40 minimum;

(H) Sulphur (A.S.T.M. D-129 and D-1266): 0.50 percent by weight maximum;

(d) Fuel oil shall conform to

the following specifications: ASTM D-396-84, "Standard Specification for Fuel Oils."

(1) Number 1: A distillate

oil intended for vaporizing pot-type and similar burners;

(A) Flash point (A.S.T.M. D-56): 100 degrees F. (38 degrees C.) minimum;

(B) Water and sediment (A.S.T.M. D-1796): Trace;

(C) Carbon residue on 10 percent residuum (A.S.T.M. D-524): 0.15 percent maximum;

(D) Distillation temperatures (A.S.T.M. D-86): 10 percent evaporated 420 degrees F. (216 degrees C.) maximum; 90 percent evaporated: 550 degrees F. (288 degrees C.) maximum;

(E) Gravity (A.S.T.M. D-287): 35 degrees API at 60 degrees F. minimum;

(F) Sulphur (A.S.T.M. D-129 and D-1266): 0.50 percent by weight maximum;

(2) Number 2: A distillate oil for general purpose domestic heating for use in burners not requiring number 1 fuel oil.

(A) Flash point (A.S.T.M. D-56): 115 degrees F. (46 degrees C.) minimum;

(B) Water and sediment (A.S.T.M. D-1796): 0.05 percent by volume maximum;

(C) Carbon residue on 10 percent residuum (A.S.T.M. D-524): 0.35 percent maximum;

(D) Distillation temperature (A.S.T.M. D-86): 90 percent evaporated 640 degrees F. (338 degrees C.) maximum;

(E) Gravity (A.S.T.M. D-287): 30 degrees API at 60 degrees F. minimum;

(F) Sulphur (A.S.T.M. D-129 and D-1266): 0.50 percent by weight maximum;

(f) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use.

(g) ASTM documents adopt by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting ASTM, 1916 Race Street, Philadelphia, PA 19103.

SECTION .0400 - DISPENSING DEVICES AND PUMPS

.0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and conspicuously labeled with the following:

- (1) for gasoline, the registered brand name;  
(2) for gasohol and leaded gasohol, either the registered brand name which includes the word "gasohol", or the registered brand name plus the phrase "Contains Ethanol" or some equivalent phrase;

- (3) (2) for diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type and/or grade of product;

- (4) (3) for gasoline-oxygenate blends containing at least one percent by volume of ethanol, methanol, or combination, the registered brand name plus an additional label as follows which states that the blend "contains alcohol," "contains ethanol," "methanol," or "contains ethanol/methanol." The label shall be composed of letters at least one inch in height which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:

(A) for Group I fuels, a not covered by an EPA waiver, the additional label stating that shall identify the fuel contains alcohols or other oxygenates, for example, "Contains Methanol", "Contains Alcohol", "Contains Oxygenates" or some equivalent identifying phrase percent by volume of ethanol and/or methanol in the blend.

(B) for Group II fuels, a meeting the EPA's "Substantially Similar" rule and which do not contain ethanol or methanol, no additional label identifying the type and percentage of each oxygenate in the blend that is 10 percent or more of the total oxygenate content, for example,

"Contains 10 percent Methanol, 5 percent Butanol", "Contains 12 percent Ethanol" or some equally explicit phrase as appropriate is required.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the State Banking Commission intends to amend regulation cited as 4 NCAC 3C .1001(4).

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 53-104; 53-110.

The public hearing will be conducted at 10:00 a.m. on March 18, 1987 at Room 6168, Dobbs Building, Raleigh, N. C.

Comment Procedures: Written comments may be sent to Office of State Banking Commission, P. O. Box 29512, Raleigh, N.C. 27626-0512. Requests for opportunity to present oral testimony and summary of testimony must be received at this address by March 2, 1987.

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3C - BANKS

SECTION .1000 - LOAN ADMINISTRATION AND LEASING

.1001 CREDIT INFORMATION

(4) A certificate of title furnished by a competent attorney at law or title insurance issued by a company approved licensed by the Commissioner of Banks Insurance must accompany each deed of trust or mortgage given as security on loans of ten twenty thousand dollars (~~10,000.00~~) (\$20,000.00) or over. The foregoing shall not apply over the original term of an extension of credit in the event a bank, which had extended such credit prior to October 22, 1986, based on the borrower's creditworthiness and projected income, subsequently takes a deed of trust or mortgage on the borrower's principal or second residence.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Milk Commission intends to amend regulations cited as 4 NCAC 7 .0508 (f), (g) and (h).

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S.  
106-266.8 (3), (7), (10);  
106-266.12.

The public hearing will be conducted at 10:00 a.m. on February 24, 1987 at Room 3137, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: Data, opinions and arguments concerning these amendments must be submitted by March 16, 1987, to the North Carolina Milk Commission, 430 North Salisbury St., Raleigh, NC 27611, Attn: Grady Cooper, Jr., Executive Secretary.

## CHAPTER 7 - MILK COMMISSION

### SECTION .0500 - MARKETING REGULATIONS

#### .0508 METHOD OF SETTLEMENT

(f) An association of producers may reimburse processors to whom they sell milk, or a processor may make a deduction from an individual producer from whom milk is purchased, for the following services and cost savings at the rates listed:

(1) field services: four cents (\$0.04) per hundredweight;

(2) testing for butterfat, bacteria and antibiotics three cents (\$0.03) per hundredweight;

(3) preparing and compiling receipts, payrolls, filing reports and preparing checks three cents (\$0.03) per hundredweight;

(4) cost savings to an association or an individual producer resulting from the receiving of milk on the basis of producer weights and tests nine cents (\$0.09) per hundredweight;

(5) cost savings to an association or an individual producer resulting from receiving milk on a uniform basis three cents (\$0.03) per hundredweight.

Prior to receiving a reimbursement from an association of producers, a written agreement between the processor and the association of producers must be on file with the processor identifying those services and cost savings which will be performed by the

processor to whom such association sells.

Prior to making a deduction from an individual producer, a processor must have a written authorization from such producer identifying the services and cost savings which will be performed by the processor to whom such producer sells.

The commission shall verify that the specific services and cost savings are performed for the reimbursement made by an association of producers or for the deduction made from an individual producer.

For purposes of this subsection, the cost savings resulting from receiving milk on the basis of producer weights and butterfat tests shall mean the processor shall accept the farm tank weight tickets for individual producers and the butterfat tests resulting from the sample drawn at the time of pickup. Cost savings resulting from receiving milk on a uniform basis shall mean that the processor shall accept milk on a regular basis at agreed times of delivery seven days per week; provided, shipments from individual producers may be on an every other day delivery basis.

(f) An association of producers or a business entity marketing milk on behalf of producers may reimburse processors to whom they sell milk, or a processor may make a deduction from an individual producer from whom milk is purchased, for the following services and cost savings at the rates listed:

(1) receiving producer milk on the basis of weights determined from the measurement at the farm - five cents (\$0.05) per hundredweight,

(2) receiving producer milk on the basis of butterfat tests determined from farm bulk tank samples - five cents (\$0.05) per hundredweight,

(3) receiving producer milk on a regular seven day per week delivery schedule including deliveries on weekends and holidays - three cents (\$0.03) per hundredweight,

(4) purchasing milk from an association of producers based upon a preordered specified minimum daily volume for a designated period of not less than a month; provided, no

reimbursement shall be made on the daily volume of deliveries which exceeds the specified minimum daily volume or on any portion of the daily volume when the deliveries fall below the minimum specified daily volume - seven cents (\$0.07) per hundredweight,

(5) performing butterfat, bacteria and antibiotic tests for individual producers or members of a producer association - three cents (\$0.03) per hundredweight,

(6) preparing and compiling receipts, payrolls, filing reports, and preparing payroll checks on behalf of a business entity marketing milk on behalf of producers - three cents (\$0.03) per hundredweight.

(g) Prior to receiving a reimbursement from an association of producers, or a business entity marketing milk on behalf of producers, a written contract containing the provisions specified in (h) of this Rule shall have been executed between such processor and an association of producers and a business entity marketing milk on behalf of producers. Such executed contract must be filed with and approved by the commission.

Prior to making a deduction from an individual producer by a processor, a written contract containing the provisions specified in (h) of this Rule shall have been executed between such processor and a producer. Such executed contract must be filed with and approved by the commission.

The commission shall verify that the specified services and cost savings as contained in the contract are performed for the reimbursement made by an association of producers or for the deduction made from an individual producer.

(h) The contract required in (g) of this Rule shall contain the following provisions and shall specify the method utilized for compensation for services performed, whether by deduction or reimbursement:

"AGREEMENT REGARDING PERFORMANCE OF AND COMPENSATION FOR COST SAVINGS

(1) It is agreed that (processor) will perform the following services for or effect the following cost savings on behalf of (producer/business entity

marketing milk on behalf of producers); and that (producer/business entity marketing milk on behalf of producers) agrees to compensate or reimburse (processor) for such services and/or cost savings at the following rates:

(A) receiving producer milk on the basis of weights determined from the measurement at the farm - cents per hundredweight,

(B) receiving producer milk on the basis of butterfat test determined from farm bulk tank samples - cents per hundredweight,

(C) receiving producer milk on a regular seven day per week delivery schedule including deliveries on weekends and holidays - cents per hundredweight,

(D) purchasing milk from an association of producers based upon a preordered specified minimum daily volume for a designated period of not less than a month; provided, no reimbursement shall be made on the daily volume of deliveries which exceeds the specified minimum daily volume or on any portion of the daily volume when the deliveries fall below the minimum specified daily volume - cents per hundredweight,

(E) performing butterfat, bacteria and antibiotic tests for individual producers or members of a producer association - cents per hundredweight,

(F) preparing and compiling receipts, payrolls, filing reports, and preparing payroll checks on behalf of a business entity marketing milk on behalf of producers - cents per hundredweight.

(2) In no instance shall said services performed or cost savings so effected by (processor) be compensated or reimbursed by (producer/business entity marketing milk on behalf of producers) at a rate which exceeds those specified by the North Carolina Milk Commission Rule 4 NCAC 7 .0508(f)."

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in

accordance with G.S. 150B-12 that the Office of the Secretary intends to amend regulations cited as 10 NCAC 1B .0201; .0202; .0206; .0208-.0213; .0215; and .0216; .0219; .0220; .0222-.0224; and adopt 10 NCAC 1F .0401-.0407.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: 143-127.2; 143B-10; 1985 Session Laws; 150B; Article 3.

The public hearing will be conducted at 9:00 a.m. on February 18, 1987 at Albemarle Building, Room 420, 325 North Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present written and/or oral comments at the public hearing. Oral presentations may not exceed 10 minutes. Persons wishing to offer comments at the public hearing should contact Victoria Voight at 325 North Salisbury, (919) 733-6920 by February 16, 1987. The hearing record will remain open for the submission of written comments from January 19, 1987-February 18, 1987. Written comments must be sent to Victoria Voight at the above address by February 18, 1987 and must state the proposed rule(s) to which they refer.

## CHAPTER 1 - DEPARTMENTAL RULES

### SUBCHAPTER 1B - PROCEDURES

#### SECTION .0200 - CONTESTED CASES

##### .0201 DEFINITIONS

The following terms shall have the following meanings unless the context of the rule requires a different interpretation:

- (2) "hearing" means a contested case hearing as provided in G.S. 150 A B -2(2) and 150 A B -23;
- (3) "hearing officer" means:
  - (a) a departmental hearing officer(s) appointed by the secretary or his/her designees; or
  - (b) Chief Hearing Officer of the OAH;
  - (b) a hearing officer appointed by the director of the OAH;

##### .0202 REQUEST FOR DETERMINATION

- (a) In accordance with 150 A B -2(2), any person may request a determination of

his/her legal rights, privileges, or duties as they relate to laws or rules administered by the department. All requests must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the department.

(b) Any person seeking such a determination must exhaust all informal procedures available before requesting a hearing under the following rules unless a more specific procedure is otherwise specified in the following chapters. G.S. 150B-23.

(c) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in accordance with G.S. 150B-23 and 26 NCAC 3 .0003. The petition shall be filed within 30 days after the petitioner receives notice of the action being appealed unless a different time limit is specified in another applicable rule or letter of notification of adverse action. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered agent for service of process for the department. A list of registered agents may be obtained from the Office of Legislative and Legal Affairs.

(d) To obtain a departmental hearing, the petition for hearing filed with the OAH must include a waiver of the right to a hearing conducted by the OAH. If the department initiates the contested case, the respondent may obtain a departmental hearing by filing a written waiver of the right to an OAH hearing with the OAH within 15 days after being served with the petition for hearing.

(e) Departmental hearings shall be conducted in accordance with the rules contained in this Section unless another procedure is specified for the hearing in the following chapters.

##### .0206 NOTICE OF HEARING

Upon receipt of a valid request petition for hearing in which a departmental hearing has been requested, the department shall schedule the matter for hearing without undue delay. At least 15 days prior to the hearing date, the hearing officer shall issue a notice of hearing to all parties that complies with G.S. 150B-23(b). The notice shall include:

- (1) a statement of the date,

hour, place and nature of the hearing;

- (2) a reference to the particular sections of the statutes and rules involved;
  - (3) a short and plain statement of the factual allegations; and
  - (4) the name of the hearing officer assigned.
- (5) notification of the party's right to request an OAH hearing and the procedure for making a request in accordance with G.S. 150A-32 (a1).

#### .0208 INTERVENTION

(a) The model rule on intervention adopted by the North Carolina Department of Justice on September 29, 1980, and codified as 22 NCAG 26 .0304 is hereby adopted by reference. In applying this Rule, the term "presiding officer" shall mean hearing officer.

(b) Copies of 22 NCAG 26 .0304 may be inspected in the Office of Legal Services, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Administrative Procedures Section of the Office of the Attorney General, 10 East Jones Street, Raleigh, North Carolina.

(a) Any person desiring to intervene in a contested case conducted in accordance with the rules contained in this Section must file a written motion to intervene with the hearing officer in a timely manner and shall serve copies of the motion on all parties to the proceeding.

(b) The motion shall include the following information:

- (1) the name and address of the movant;
- (2) the business or occupation of the movant if relevant;
- (3) identification by case name and docket number of the proceeding in which the movant seeks to intervene;
- (4) any statutory basis under which the movant is qualified to intervene;
- (5) facts demonstrating that the movant's rights, duties, privileges, or other substantial interests may be affected by the proceeding;
- (6) the claims or defenses for which intervention is sought;
- (7) a summary of the arguments or evidence that the movant wishes to present.

(c) Any party may object to the motion to intervene by filing a written notice of objection with the hearing officer within 10 days after receipt of the motion and serving copies of the notice of objection on all other parties and the movant. The notice of objection shall state clearly the grounds for the objection.

(d) The hearing officer shall determine whether to allow intervention and, if appropriate, the extent to which the intervenor may participate in the proceeding. The hearing officer shall then issue an order granting or denying the motion, specifying any limitations on the intervention and stating the reasons for the ruling. Copies of the order shall be served on all parties and the movant. The hearing officer may amend the order for good cause.

#### .0209 WRITTEN ANSWER

(a) Any party who has received a notice of hearing may file a written answer. The answer must be mailed to all other parties and the hearing officer not less than 10 days before the date set for hearing. and must be received by the hearing officer at least 7 days before the date set for hearing.

(b) Any party may request that the hearing be conducted by an OAH hearing officer rather than a departmental hearing officer by including such a request in the answer. Absent a timely request for an OAH hearing officer, the hearing will be conducted by a departmental hearing officer.

(c) Upon receipt of a timely request for an OAH hearing officer, the department shall request that the Chief Hearing Officer of OAH assign a hearing officer to conduct the hearing.

#### .0210 VENUE

(a) The model rule on venue adopted by the North Carolina Department of Justice on September 29, 1980, and codified as 22 NCAG 26 .0305, is hereby incorporated by reference. In applying this Rule, the term "presiding officer" shall mean the hearing officer.

(b) Copies of 22 NCAG 26 .0305 may be inspected in the Office of Legal Services, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Administrative Procedure Section

of the Office of the Attorney General, 10 East Jones Street, Raleigh, North Carolina.

(a) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least 10 days prior to the date for which the hearing is set.

(b) The motion shall include the following information:

- (1) the name and address of the movant;
- (2) identification by the case name and docket number of the proceeding for which the change is sought;
- (3) the time, date, and place for which the hearing is scheduled;
- (4) the county in which the party requests that the hearing be held; and
- (5) a statement of the reasons for the requested change, including the names and addresses of any witnesses whose convenience represents the basis for the request.

(c) any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within five days after receipt of the motion and serving copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.

(d) The hearing officer shall determine whether a change of venue is appropriate and shall issue an order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

#### .0211 DISCOVERY

(a) The model rule on discovery adopted by the North Carolina Department of Justice on September 29, 1980, and codified as 22 NCAG 26 .0307, is hereby incorporated by reference. In applying this Rule, the term "presiding officer" shall mean the hearing officer.

(b) Copies of 22 NCAG 26 .0307 may be inspected in the Office of Legal Services, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Administrative Procedures Section of the Office of the Attorney General, 10 East Jones Street, Raleigh, North Carolina.

(a) parties in contested cases shall exchange information voluntarily, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.

(b) Within 30 days after receipt of a request for discovery or within such other time limit as the hearing officer may set, the party from whom discovery is requested shall either:

- (1) provide the requested material or access to that material to the discovering party;
- (2) provide a schedule for compliance with the request for discovery; or
- (3) file a written motion with the hearing officer for relief from the request for discovery.

(c) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

#### .0212 PRE-HEARING CONFERENCE

(a) Upon notice to all parties, the hearing officer may request that instruct the parties to participate in a pre-hearing conference.

#### .0213 SUBPOENAS

(a) The model rule on subpoenas adopted by the North Carolina Department of Justice on September 29, 1980, and codified as 22 NCAG 26 .0308 is hereby incorporated by reference. In applying this Rule, the term "presiding officer" shall mean hearing officer.

(b) Copies of 22 NCAG 26 .0308 may be inspected in the Office of Legal Services, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Administrative Procedures Section of the Office of the Attorney General, 10 East Jones Street, Raleigh, North Carolina.

(a) Requests for subpoenas shall be made to the hearing officer in writing. The requests must be filed within a reasonable time after the need for the subpoena becomes evident to the requesting party.

(b) A request for a subpoena shall contain the following information:

(1) the full name, the home and business addresses, and the home and business telephone numbers of person(s) or specific identification of the document(s) or category of documents to be subpoenaed;

(2) identification by case name and docket number of the proceeding for which the subpoena(s) is sought;

(3) a brief statement of the potential relevance of the testimony or the documents sought;

(4) the time, date, and place for responding to the subpoena.

(c) Subpoenas shall be served as directed by the hearing officer and as appropriate to the circumstances of the case. Methods of service may include service by an employee of the agency or any method set out in G.S. 1A-1, Rule 45. The cost of service, any fees and expenses of subpoenaed witnesses shall be paid by the party requesting the subpoena.

(d) Any person receiving a subpoena may object to the issuance of the subpoena by filing a written notice of objection with the hearing officer within 10 days after receipt of the subpoena and serving a copy of the objection on the party that requested the subpoena. The notice of objection shall state the reasons why the subpoena should be revoked or modified.

(e) The hearing officer shall determine the appropriateness of the subpoena and shall issue an order upholding, modifying, or revoking the subpoena. The order shall contain the reasons for the decision. Copies of the order shall be served on the party that requested the subpoena and the person that objected to the subpoena.

#### .0215 STIPULATIONS

The parties in a contested case by a stipulation filed with the hearing officer may agree upon any fact involved in the controversy, which stipulation shall be admissible as evidence at the hearing and binding on the parties thereto.

Parties in a contested case may stipulate to any fact involved in the controversy in accordance with G.S. 150F-31. Parties may enter such agreements on their own or may request a settlement conference to promote consensual disposition of the case.

#### .0216 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time any hearing officer believes he could not cannot conduct a hearing and perform his other functions related to the contested case contested case in a fair and impartial manner, he shall submit to the secretary or his designee a written statement indicating why he should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The secretary or his designee shall inform all parties of the disqualification and the reasons therefor.

(b) If a party in a contested case believes that any the hearing officer (s) of record could not cannot conduct the hearing and perform his other functions related to the contested case in a fair and impartial manner, the party shall submit to the secretary or his designee a written statement indicating why the hearing officer should be disqualified from the case. The statement must be filed at the first opportunity after the party becomes aware of the reasons for disqualification; provided, that the statement may also be filed at any time before the hearing begins. The secretary or his designee shall inform all parties that the statement has been filed and shall, upon request by any party, provide that party with a copy of the statement. The secretary or his designee shall investigate the allegations of the statement and shall decide whether to disqualify the hearing officer. The secretary or his designee shall promptly inform all parties of the decision and the reasons therefor. In no case shall the secretary's designee be the hearing officer whose disqualification is sought by the party.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, proceed with a contested case, another hearing officer shall be assigned by the secretary or his designee to proceed with the case. However, if it is shown to the secretary, his designee, or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

(1) the case shall be

dismissed without prejudice;  
or

- (2) all or part of the case shall be repeated or begun again as necessary to substantially prevent or substantially remove the prejudice.

The secretary or his designee shall promptly inform all parties of his decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated, or begun again. Such notification shall include a statement of the reasons for the decision.

#### .0219 CONDUCT OF HEARING

In accordance with G.S. 150 A B -33, the hearing officer shall have complete control over the hearing, including:

- (1) the responsibility of having a record made of the hearing,
- (2) recognition of speakers,
- (3) prevention of repetitious presentations, and
- (4) general management of the hearing.

#### .0220 DECISION

(a) In accordance with G.S. 150 A B -34, if the hearing officer has not been delegated the final decision-making authority for the matter at issue, the hearing officer shall prepare a proposal for decision which shall be served on all parties. The proposal shall contain findings of fact, conclusions of law and a proposed decision.

(d) When the final decision-maker is not the hearing officer, the final decision-maker may in his/her discretion allow the parties to make oral arguments prior to issuing a final decision. In such cases, the final decision-maker may place whatever restrictions he/she deems appropriate on such presentations including reasonable time limits on the presentation of oral arguments. During oral arguments the parties may not introduce new evidence.

(e) (d) In making a final decision, the final decision-maker must consider fully all material contained in the hearing record. The final decision must be in writing and contain findings of fact and conclusions of law. In those cases where the final decision is different from the

recommended decision, the final decision must contain specific reasons why the recommended decision was not adopted. A copy of the final decision shall be served upon all parties.

(e) If the final agency decision-maker determines that the official record of a contested case does not contain sufficient information on which to base the final agency decision, the case may be remanded to the hearing officer for the curing of the insufficiency. The remand order shall contain specific instructions as to how the insufficiency in the official record may be cured.

#### .0222 TRANSCRIPTS

Any person who desiring a transcript of all or part of a contested case hearing shall contact the Office of Legislative and Legal Affairs or the appropriate division hearing office. A fee equal to the cost of preparing the transcript shall be charged and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

#### .0223 CONSOLIDATION

(a) Parties requesting consolidation of contested cases or parts thereof shall file a written motion for consolidation with the hearing officer and shall serve copies of the motion on all other parties to the matters for which consolidation is requested.

(b) The motion shall include the following information:

- (1) the name and address of the movant;
- (2) the names and docket numbers of all contested cases that the movant seeks to have consolidated; and
- (3) a statement of the reasons prompting the request for consolidation.

(c) Any party may oppose the requested consolidation by filing a notice of objection with the hearing officer within 10 days of the receipt of the motion. Copies of the motion shall be served on all other parties. The notice of objection shall state clearly the reasons why the party objects to the consolidation.

(d) The hearing officer shall determine whether consolidation is appropriate and shall issue an order stating whether and to what extent consolidation will

be allowed. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

#### .0224 FAILURE TO APPEAR

(a) If a party in a contested case fails to appear at the hearing, the hearing officer may proceed with the hearing, or the hearing officer may find the allegations set out in the notice of hearing or other pleadings to be taken as true or deemed proved without further evidence.

(b) If the hearing is conducted in the absence of a party, the absent party may request that the hearing be re-opened by filing a motion to that effect with the hearing officer within 10 days of the hearing date. The motion shall contain the reasons that the movant failed to appear at the hearing or request a continuance prior to the hearing. Copies of the motion shall be served on all parties.

(c) The hearing officer shall grant the motion for reopening of the case upon a showing of good cause.

### SUBCHAPTER 1F - REIMBURSEMENT

#### SECTION .0400 - DEPARTMENTAL RULES ON REPAIR/REPLACEMENT OF PERSONAL PROPERTY

##### .0401 PURPOSE AND SCOPE

The purpose of the rules contained in this Section is to establish a uniform policy governing repair or replacement of personal property items belonging to employees, volunteers, or clients of Department of Human Resources facilities. The rules contained in this Section are intended to interpret or supplement the requirements contained in G. S. 143 Article 7A. Each division director is responsible for implementing the requirements contained in G.S. 143 Article 7A and the rules contained in this Section as they relate to facilities under his/her supervision and may develop more specific policies governing their implementation.

##### .0402 DEFINITIONS

As contained in this Section, the following terms have the following meanings;

(1) "Client" means any person who is under the supervision of a Department of Human Resources facility for

purposes of treatment, habilitation or education;

(2) "Employee" means an individual hired on a temporary, part-time, or full-time basis by the Department of Human Resources facility;

(3) "Facility" means a hospital, center, institution or school operated by the Department of Human Resources; and

(4) "Volunteer" means an individual certified or accepted by the facility to perform assigned duties for the facility without remuneration for time spent in the performance of these duties.

#### .0403 CRITERIA FOR DETERMINING REIMBURSEMENT ELIGIBILITY

Prior to issuing reimbursements to facility employees, volunteers, or clients for personal property damaged or stolen by facility clients, the facility director or designee must prepare a written report, including the following information:

(1) facts supporting a conclusion that the client, employee or volunteer is eligible to seek reimbursement under the requirements of G.S. 143-127.2;

(a) for employees and volunteers, this includes written findings that the damage or theft occurred within the scope of their employment or volunteer duties and that the item(s) damaged or stolen was necessary to the performance of those assigned duties;

(b) for clients, this includes written findings that the item(s) was damaged or stolen while the client was under the supervision of the facility and that the item(s) was a necessary part of the treatment, habilitation, or education environment as determined by personnel responsible for treatment, habilitation, or education decisions concerning the client. Reimbursement for damaged property may not be granted to a client if that client was responsible for the damage to the property;

(2) facts supporting a conclusion that the employee, volunteer or client is

eligible for reimbursement under G.S. 143-127.3;

- (3) facts supporting a conclusion that the requirements of G.S. 143-127.4 have been met. In documenting compliance with this provision, the facility shall specify the efforts made to recover the reimbursement cost from insurance, the client or other sources as applicable; and
- (4) a description of the item damaged or stolen and evidence as to its repair/replacement value less normal depreciation.

#### .0404 LIMITATION ON REIMBURSEMENT

Reimbursement may not exceed two hundred dollars (\$200.00) per incident. In applying the reimbursement limitations set out in G.S. 143-127.5, the five hundred dollars (\$500.00) per year limitation shall apply to volunteers and clients as well as employees and shall be calculated using the state fiscal year.

#### .0405 PROCEDURE FOR REQUESTING REIMBURSEMENT

The division/facility director shall determine the procedure for seeking reimbursement subject to the following limitations:

- (1) a written account of the incident which resulted in the request shall be prepared by the employee, volunteer, or client (or client representative) and presented to the facility director or designee within 48 hours of the time that the employee, volunteer, or client becomes aware of the incident. If a client requests assistance from facility staff in preparing this account, the assistance shall be provided to the client;
- (2) the written account must include:
- (a) a brief description of the incident including date, time, place and individuals involved; and
- (b) a description of the items for which reimbursement is sought, including cost, age, and in the case of damaged property, a description of the damage. Damaged articles must be made available for inspection by facility personnel at the request of the facility.

#### .0406 RESPONSE TO REQUEST AND APPEAL RIGHTS

(a) Within 30 days of a completed request for reimbursement, the facility director or designee shall respond to the request for reimbursement.

(b) If no response is received or if a negative response is received, the employee, volunteer, or client may file a request for reconsideration with the division director or designee within 10 days of receipt of the facility decision or the expiration of the period for rendering the facility decision, whichever is earlier. The facility director shall forward all pertinent information to the division director or designee for review within 10 days of receipt of a request for that information.

(c) Within 15 days of receipt of the request for reconsideration, the division director or designee shall issue a response to the request. If no response or a negative response is received, the employee, volunteer, or client may then request a contested case hearing in accordance with G.S. 150B-23 by submitting a petition for hearing to the Office of Administrative Hearings within 10 days of receipt of the decision of the division director or designee or the expiration of the period for the rendering of that decision, whichever is earlier. The final administrative decision shall be issued by the Director, Division of Budget and Analysis or designee. Nothing in this section shall be construed as superseding the requirements of G.S. 143-127.5 that payment of any claim for reimbursement shall be subject to the identification of funds by the facility to cover the cost of reimbursement.

#### .0407 NOTICE

Clients shall be made aware of the potential liability under G.S. 143, Article 7A.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend and repeal regulations cited as 10 NCAC 4C .0203; .0204; and .0402; 10 NCAC 7A .0401; 10 NCAC 8C .1202; .1203; .1210; .1302; .1309; and .1310; .1312 and 10 NCAC 8F .0111 and 10 NCAC 10A .2001; .2007-.2010; and 10 NCAC

10D .2401; .2407; .2409-.2411;  
and 10 NCAC 10F .0001;  
.0028-.0032; .0034; and .0041  
and 10 NCAC 10G .0701;  
.0703-.0707.

The proposed effective date of this action is May 1, 1987; June 1, 1987; and July 1, 1987.

Statutory Authority: G.S.  
130A-5(3); 130A-22; 130A-22(f);  
130A-124; 130A-127; 130A-152(c);  
130A-177; 130A-205; 130A-294(c);  
130A-361; 143B-193.

The public hearing will be conducted at 1:30 p.m. on February 17, 1987 at Archdale Building, Room G 170 (Hearing Room), 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on these subjects may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on these subjects may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

#### CHAPTER 4 - HEALTH: OFFICE OF THE DIRECTOR

##### SUBCHAPTER 4C - PAYMENT PROGRAMS

##### SECTION .0200 - ELIGIBILITY DETERMINATIONS

###### .0203 ANNUAL NET FAMILY INCOME

(a) Annual net family income shall be computed by subtracting the deductions allowed in Paragraph (d) of this Rule, from the gross family income as computed in Paragraph (c) of this Rule.

(b) The time period to be used as the basis for computing annual net family income is the 12 month period preceding the date a patient or his representative makes application for eligibility to a particular payment program. However, if the family's major wage earner was any of the family's wage earners were unemployed at any time during this 12 month period, that wage earner's

portion of the annual net family income shall be computed on the basis of the 6 month period preceding the date of application plus a projection for the 6 month period succeeding the date of application based upon the current employment or benefit situation.

###### (c) Gross Family Income

###### (1) Gross family income

shall mean the combined cash income received by the patient's family from the following sources:

~~(A) Salaries and wages;~~

~~(B) Earnings from self-employment;~~

~~(C) Investment income, stocks, bonds, savings, account interest, rentals, and all other investment income;~~

~~(D) Public assistance money;~~

~~(E) Unemployment compensation;~~

~~(F) Alimony and child support payments;~~

~~(G) Military allotments;~~

~~(H) Social Security benefits;~~

~~(I) Veteran's administration benefits;~~

~~(J) Retirement and pension payments; and~~

~~(K) Worker's compensation.~~

(A) salaries and wages;

(B) Earnings from self-employment;

(C) Investment income, stocks, bonds, savings account and money fund interest, rentals, and all other investment income;

(D) Periodic Trust Fund payments;

(E) Public assistance money;

(F) Unemployment compensation;

(G) Alimony and child support payments received;

(H) Military allotments;

(I) Social Security benefits;

(J) Veteran's Administration benefits;

(K) Retirement and pension payments;

(L) Worker's compensation;

(M) Educational stipends in excess of the cost of tuition and books;

(N) Income tax refunds;

(O) Allowances paid for basic living expenses such as housing and utilities;

(P) All other sources of cash income except those specifically excluded.

###### (2) Gross family income

does not include:

(A) Income that children

- may earn from babysitting, lawn mowing, or other miscellaneous tasks;
- (B) Supplemental Security Income benefits;
  - (C) Proceeds from the sale of an asset;
  - (D) Withdrawals from a bank account;
  - (E) Gifts;
  - (F) Inheritances;
  - (G) Life insurance proceeds of other one time insurance settlements.
- (d) Any of the following expenses which are paid or incurred by a member of the patient's family shall be allowed as deductions in determining annual net family income:
- (1) State, federal, and social security taxes and any deductions from pay required as a condition of employment such as mandatory retirement contributions;
  - (2) Medical and dental expenses not covered by a third party payor, including the reasonable cost of transportation required to obtain the medical and dental services;
  - (3) Health insurance premiums;
  - (4) Child care expenses for any child under 15 years of age and any handicapped child over 14 years of age if both parents work or are disabled; Child care expenses for any child 14 years of age and under and any handicapped child 15 years of age and over if both parents of a two parent family or a single parent work or are disabled;
  - (5) Expenses for the care of a spouse who is physically or mentally unable to take care of himself or herself while the other spouse is at work;
  - (6) Child support and alimony payments and paid to support someone outside of the family household; and
  - (7) Educational expenses incurred because of the disability of a member of the patient's family for the purpose of managing the disability of any member of the patient's family.

#### .0204 DETERMINATION OF FAMILY SIZE

(a) For the purpose of determining eligibility for benefits provided by any of the payment programs, a patient's family shall be defined as the

patient and all individuals living in the same household with the patient who are:

- (1) The patient;
  - (2) All individuals related to the patient by blood, marriage, adoption, or guardianship who live in the same household as the patient and who also:
    - (A) contribute to the support of the patient;
    - (B) have all or part of their support provided by the patient; or
    - (C) share with the patient a common source of support which is provided by a person who lives in the same household as the patient;
  - (3) A student related to the patient by blood, marriage, adoption, or guardianship whose permanent home is the household in which the patient lives, and who also:
    - (A) contributes to the support of the patient;
    - (B) have all or part of their support provided by the patient; or
    - (C) share with the patient a common source of support which is provided by a person who lives in the household of the patient; and
  - (4) In the case of patient who is temporarily living away from his permanent home while attending school, all individuals related to the patient by blood, marriage, adoption, or guardianship who live in the household which is the permanent household of the student patient, and who also:
    - (A) contribute to the support of the patient;
    - (B) have all or part of their support provided by the patient; or
    - (C) share with the patient a common source of support which is provided by a person who lives in the permanent household of the patient.
- (b) For the purposes of this Rule, individuals related to the patient by marriage shall include, but not be limited to stepparents, stepchildren, stepbrothers and stepsisters, half-brothers, and half-sisters of the patient. However, if a stepparent of the patient refuses to accept responsibility for the medical expenses of the patient, then the patient's family shall include only those individuals related to the

patient by blood, guardianship, or adoption who meet the requirements of Paragraph (a) of this Rule:

- (1) parents, not including step-parents, of the patient, if the patient is unmarried and less than eighteen years of age;
  - (2) siblings or half-siblings of the patient, but not step-siblings, if the siblings are unmarried and less than 18 years of age;
  - (3) siblings or half-siblings of the patient, but not step-siblings, if the siblings are 18 years of age or over and have no income; and
  - (4) the spouse of the patient; and
  - (5) individuals related to the patient by blood, marriage, or adoption, if the individual has no income, and if no parent(s) or spouse of the individual lives in the same household and has income;
- (b) Individuals who are students and are temporarily living away from their permanent home while attending school are for the purposes of the Rule considered to be living in the household of the permanent home.
- (c) An adopted child who has received approval for Children's Special Health Services support pursuant to 10 NCAC 8D .0800 shall be considered a family of one for purposes of this Rule.
- (d) Except as provided in paragraph (c) of this Rule, an adopted child shall be considered the same as a biological child and an adoptive parent shall be considered the same as a biological parent.
- (e) For the purpose of this Rule, a half-sibling is a child who has one biological parent in common with the patient. A step-sibling is the child of a step-parent who has no biological parent in common with the patient.

#### SECTION .0400 - REIMBURSEMENTS

##### .0402 REIMBURSEMENT FOR INPATIENT HOSPITALIZATION

(c) The division shall reimburse providers of authorized inpatient hospitalization services under the Migrant Health Program at the rate of one two hundred twenty five dollars (\$25.00) (\$200.00) per day or the full Medicaid per diem, whichever is less.

## CHAPTER 7 - HEALTH EPIDEMIOLOGY

### SECTION .0400 - IMMUNIZATION

#### .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every child in North Carolina shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) diphtheria, tetanus, and whooping cough-- five doses: three doses by age one year and two booster doses, one in the second year of life and the second on or after the fourth birthday;
  - (2) oral poliomyelitis vaccine, trivalent type--three doses by age two years; or monovalent type--one dose of each type by age two years; oral poliomyelitis vaccine--three doses of trivalent type by age two years and a booster dose of trivalent type on or after the fourth birthday; or one dose of each of the three monovalent types by age two years and a dose of trivalent type after the fourth birthday;
  - (5) mumps vaccine--one dose of live attenuated vaccine by age two years.
- (b) Notwithstanding the requirements of Subsection (a) of this Regulation:
- (6) The requirements for mumps vaccine, and for booster doses of diphtheria, tetanus, and whooping cough vaccine and oral poliomyelitis vaccine, shall not apply to children who enrolled for the first time in the first grade before July 1, 1987. Children who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose.

## CHAPTER 8 - HEALTH: PERSONAL HEALTH

### SUBCHAPTER 8C - NUTRITION AND DIETARY SERVICES

#### SECTION .1200 - WIC PROGRAM ADMINISTRATIVE APPEALS

##### .1202 GENERAL CONDITIONS (REPEALED)

##### .1203 AVAILABILITY

(b) All administrative appeals

under this Section other than those resulting from sanctions imposed under 10 NCAC 1K -0900 must be in writing stating the reasons for the appeal to the Director of the Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602 and the appeal must be received by the director shall be made in accordance with G.S. 150B and 10 NCAC 1B. The Appeal must be made:

.1210 HEARING PROCEDURE  
AND RIGHTS OF THE  
PARTIES (REPEALED)

SECTION .1300 - WIC PROGRAM  
PARTICIPANT FAIR HEARINGS

.1302 GENERAL CONDITIONS

(a) This Section shall be carried out in accordance with 7 C.F.R. 246.23 247.20 (1979) and G.S. 150B-22. The fair hearing procedures set out in this Section establish an informal dispute resolution process which must be complied with prior to making a formal appeal in accordance with G.S. 150B and 10 NCAC 1B.

.1309 HEARING OFFICER

The agency official or any designated representative he/she may name who did not participate in making the decision under appeal may be the hearing officer. The hearing officer shall:

- (1) administer oaths and affirmations preside over the informal proceedings;

.1310 HEARING PROCEDURE  
AND RIGHTS OF THE  
AGGRIEVED PARTY

(d) Any party to the hearing may present any oral or documentary evidence and arguments. including an opportunity to confront and cross examine adverse witnesses.

.1312 APPEAL OF A FAIR  
HEARING DECISION  
(REPEALED)

SUBCHAPTER 8F - SICKLE CELL  
SYNDROME: GENETIC  
COUNSELING:  
DEVELOPMENTAL  
DISABILITIES BRANCH

SECTION .0100 - SICKLE CELL  
SYNDROME PROGRAM

.0111 MEDICAL SERVICES  
PROVIDED

(a) The North Carolina sickle cell syndrome program shall provide services only when they

are not available through other sources or agencies. Prior to requesting services, it should be determined that the patient is not eligible for services through the division of services for the blind, Medicaid and Medicare programs, school health program, vocational rehabilitation, workmen's compensation or civilian health and medical programs of the uniformed services (CHAMPUS).

(b) If an individual meets the eligibility requirements, he shall be provided the following medical services:

(1) For individuals below the age of 21, all outpatient and all inpatient care shall be paid for by the Crippled Children's Program, including all hospital and physician fees. For individual 21 years of age and older, all outpatient and all inpatient care shall be paid for by the Sickle Cell Syndrome Program.

(2) Outpatient services

include:

(A) routine visits to the physician;

(B) prescription drugs such as antibiotics;

(C) general analgesics;

(D) appliances;

(E) preventive and limited maintenance dentistry for adult patient only;

(F) obstetrical care (excluding delivery of baby); and

(G) eye care (when the division of services for the blind will not provide coverage).

The Sickle Cell Syndrome Program provides reimbursement for services and supplies related to sickle cell disease which are provided to financially and medically eligible individuals 21 years of age and older. Financially eligible children under 21 with sickle cell disease who are not served by physicians rostered with Children's Special Health Services are also covered. The following services are covered:

(1) inpatient hospitalization which is limited to five (5) days per admission; and

(2) outpatient services:

(a) hospital outpatient services,

(b) emergency room services,

(c) physician's services,

(d) drugs and administration of drugs,

(e) physical, occupational and speech therapies,

(f) appliances and supplies,

(g) dental care for children,  
(h) emergency dental care  
for adults, limited to  
services necessary to  
control bleeding, relieve  
pain, eliminate acute  
infection, and treat  
traumatic injuries to the  
teeth; and

(i) eye care, only when  
documentation is provided  
that coverage through the  
Division of Services for the  
Blind is unavailable.

## CHAPTER 10 -HEALTH SERVICES: ENVIRONMENTAL HEALTH

### SUBCHAPTER 10A - SANITATION

#### SECTION .2000 - ADMINISTRATIVE PENALTIES

##### .2001 DEFINITIONS

(2) "Hearing Officer" means  
the division of health  
services hearing officer  
presiding officer in a  
contested case hearing;

##### .2007 PROCEDURE FOR ASSESSMENT

(b) For all violations for  
which a penalty is assessed, a  
notice of such action shall be  
sent to the respondent by  
registered or certified mail.  
The notice shall describe the  
nature of the violation with  
reasonable particularity, the  
amount of the penalty for each  
violation, that each day of a  
continuing violation constitutes  
a separate violation, advise  
that the penalty is now due or  
that it will become due at the  
end of a specified time, and  
advise the respondent of his  
rights of appeal as specified in  
10 NCAC 1B -0200.

##### .2008 PAYMENTS: HEARING

(a) Within 30 days after  
receipt of notification of a  
penalty assessment, the  
respondent must tender payment,  
or submit in writing a request  
for an administrative hearing  
specifying all the factual or  
legal issues in dispute, or  
submit in writing a request for  
an administrative hearing or  
remission or mitigation of the  
penalty stating the reasons why  
such request is justified. Where a hearing is requested, it  
shall be held in accordance with  
rules contained in 10 NCAC 1B  
-0200. All appeals shall be  
made in accordance with G. S.  
150E and 10 NCAC 1B.

##### .2009 STAY OF PENALTY ASSESSMENT

When an administrative hearing  
is requested for a purpose other  
than remission or mitigation of  
the penalty assessed, the  
penalty will be stayed as of the  
date of said request until  
service of the final decision in  
accordance with 10 NCAC 1B -0200  
or other settlement of the  
matter.

#### .2010 WAIVER OF ADMINISTRATIVE HEARING

(a) Notwithstanding Rule  
10 NCAC 1B -0207, the respondent  
may, for a good cause, request a  
continuance of the hearing. The  
request must be made in writing  
and be received by the hearing  
officer at least five days  
before the scheduled hearing.  
The hearing officer will  
determine if a continuance  
should be granted or denied and  
shall so inform the respondent  
of its decision at least one day  
prior to the scheduled hearing.

### SUBCHAPTER 10D - WATER SUPPLIES

#### SECTION .2400 - ADMINISTRATIVE PENALTIES

##### .2401 DEFINITIONS

(2) "Hearing Officer" means  
the division of health  
services hearing officer  
presiding officer in a  
contested case hearing;

##### .2407 PROCEDURE FOR ASSESSMENT

(b) For all violations for  
which a penalty is assessed, a  
notice of such action shall be  
sent to the respondent by  
registered or certified mail.  
The notice shall describe the  
nature of the violation with  
reasonable particularity, the  
amount of the penalty for each  
violation, that each day of a  
continuing violation constitutes  
a separate violation, advise  
that the penalty is now due or  
that it will become due at the  
end of a specified time, and  
advise the respondent of his  
rights of appeal as specified in  
10 NCAC 1B -0200.

##### .2409 PAYMENTS: HEARING

(a) Within 30 days after  
receipt of notification of a  
penalty assessment, the  
respondent must tender payment,  
or submit in writing a request  
for an administrative hearing  
specifying all the factual or  
legal issues in dispute, or  
submit in writing a request for  
an administrative hearing or  
remission or mitigation of the  
penalty stating the reasons why

such request is justified. Where a hearing is requested, it shall be held in accordance with rules contained in 10 NEAC 1B -0200. All appeals shall be made in accordance with G.S. 150B and 10 NCAC 1B.

.2410 STAY OF PENALTY  
ASSESSMENT

When an administrative hearing is requested for a purpose other than remission or mitigation of the penalty assessed, the penalty will be stayed as of the date of said request until service of the final decision in accordance with Rule -0220, Subchapter 1B of this Title or other settlement of the matter.

.2411 WAIVER OF ADMINISTRATIVE  
HEARING

Notwithstanding Rule -0207, Subchapter 1B of this Title, the respondent may, for a good cause, request a continuance of the hearing. Such request must be made in writing and be received by the hearing officer at least five days before the scheduled hearing. The hearing officer will determine if such a continuance should be granted or denied and shall so inform the respondent of its decision at least one day prior to the scheduled hearing.

SUBCHAPTER 10F -HAZARDOUS  
WASTE MANAGEMENT

.0001 GENERAL

(c) 45 Fed. Reg. 33, 073 (1980) [to be codified in 40 CFR 260.1 to 260.3 (Subpart A)], "General," has been adopted by reference as amended by 51 Fed. Reg. 28,682 (1986).

.0028 PETITION FOR RULEMAKING,  
DELISTING AND EQUIVALENT  
METHODS - PART 260

(b) The provisions for "Petitions for Equivalent Testing or Analytical Method" [codified in 40 CFR 260.21] have been adopted by reference as amended by 49 Fed. Reg. 47,391 (1984).

.0029 IDENTIFICATION AND  
LISTING OF HAZARDOUS  
WASTES - PART 261

(a) The general provisions contained in 45 Fed. Reg. 33,119 to 33,121 (1980) [to be codified in 40 CFR 261.1 to 261.6 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 72,028, 72,037, 76,620, 76,623, 76,624, and 78,531 (1980); 46 Fed. Reg.

56,588, 56,589, 47,429, 44,972, 44,973 (1981); 48 Fed. Reg. 2,532, 14,293, 14,294, and 30,115 (1983); 49 Fed. Reg. 23,287, and 44,980 (1984); and 50 Fed. Reg. 663, 664, 665, 1,999, 14,219, 28,743, 28,744, 49,202, 49,203, and 33,542, (1985); and 51 Fed. Reg. 10,174, 10,175 and 25,472, and 28,682 (1986).

(e) The "Lists of Hazardous Wastes" and the accompanying appendices (I through VIII X) contained in 45 Fed. Reg. 33,122 to 33,137 (1980) [to be codified in 40 CFR 261.30 to 261.33 (Subpart D)] have been adopted by reference as amended by 45 Fed. Reg. 72,032 to 72,304, 74,890, 74,892, and 74,894 (1980); 46 Fed. Reg. 78,529, 78,537 to 78,544, 4,614, to 4,620 (1981); 49 Fed. Reg. 5,312, 19,923 (1984); and 50 Fed. Reg. 662, 665, and 2,000 and 28,744 (1985). Supplemental material contained in 45 Fed. Reg. 47,833, and 47,834 (1980); 46 Fed. Reg. 35,247 to 35,249 (1981); and 48 Fed. Reg. 14,294, and 15,256 to 15,258 (1983) have also been adopted by reference as amended by 50 Fed. Reg. 1999, 2001, 2002, and 2003, 14,219, 42,942, and 42,943, and 53,319 (1985); and 51 Fed. Reg. 2,702, 6,541, 6,542, 5,330, 10,175, and 19,322, 28,297 to 28,309, 28,310, 28,682, and 33,612. (1986).

.0030 STANDARD FOR HAZARDOUS  
WASTE GENERATORS  
- PART 262

(d) The provisions for "Recordkeeping and Reporting" contained in 45 Fed. Reg. 33, 144 (1980) [to be codified as 40 CFR 262.40 to 262.44 (Subpart D)] have been adopted by reference as amended by 48 Fed. Reg. 3,981, 3,892, 14,294 (1983); 50 Fed. Reg. 28,746 (1985); and 51 Fed. Reg. 10,176 and 28,682 (1986).

(e) The provisions for "Special Conditions" contained in 45 Fed. Reg. 33,144 (1980) [to be codified in 40 CFR 262.50 and 262.5 + 8 (Subpart E)] have been adopted by reference as amended by 46 Fed. Reg. 78,529 (1981) and 48 Fed. Reg. 14,294, 13,027, and 13,028 (1983); 49 Fed. Reg. 10,500 (1984) and 50 Fed. Reg. 28,746 (1985); and 51 Fed. Reg. 28,682 to 28,684 (1986).

(f) "Imports of Hazardous Waste" provisions contained in 51 Fed. Reg. 28,684 and 28,685 (1986) [to be codified in 40 CFR

262.60 to 262.69 (Subpart F) have been adopted.

(g) "Farmers" provisions contained in 51 Fed. Reg. 28,685 (1986) [to be codified in 50 CFR 262.70 to 262.79 (Subpart G)] have been adopted.

(f) (h) The appendix contained in 45 Fed. Reg. 33,145 to 33,148 (1980) has been adopted by reference as amended by 48 Fed. Reg. 3,982 (1983) and 49 Fed. Reg. 10,500 to 10,506 (1984); and 50 Fed. Reg. 28,744, 28,745, and 28,746 (1985); and 51 Fed. Reg. 28,685, 35,192 to 35,194 (1986).

**.0031 STANDARDS FOR  
HAZARDOUS WASTE  
TRANSPORTERS - PART 263**

(c) The provisions for "Compliance With the Manifest System and Recordkeeping" contained in 45 Fed. Reg. 33,151 and 33,152 (1980) [to be codified in 40 CFR 263.20 to 263.22 (Subpart B)] have been adopted by reference as amended by 45 Fed. Reg. 86,973, 86,974 (1980); and 51 Fed. Reg. 10,176 and 28,685 (1986).

**.0032 STANDARDS FOR OWNERS/  
OPERATORS OF HWMF's  
- PART 264**

(i) "Financial Requirements" contained in 46 Fed. Reg. 2,851 to 2,866 and 7,678 (1981) [to be codified in 40 CFR 264.140 to 264.151 (Subpart H)] have been adopted by reference as amended by 47 Fed. Reg. 15,047 to 15,064 and 16,554 to 16,558, and 32,357 (1982) and 48 Fed. Reg. 30,115 (1983), and 51 Fed. Reg. 16,447 to 16,451, 25,472, (1986), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.147(a), 40 CFR 264.147(b), 40 CFR 264.151(a)(1), Section 15, and 40 CFR 264.151(g), and 40 CFR 264.151(a), (b), (c), (d), (e), (f), (h), (i), and (j) are not adopted by reference.

(27) The following shall be substituted for the provisions of 40 CFR 264.151(a), (b), (c), (d), (e), (f), (h), (i), and (j), which were not adopted by reference:  
"264.151 Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in Sections 264.143(a) or 264.145(a) or Sections 265.143(a) or 265.145(a) of this chapter, must be worded as follows,

except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Trust Agreement**

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of" or "a national band"], the "Trustee."

Whereas, the North Carolina Department of Human Resources, "DHR", an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions.**  
**As used in this Agreement:**

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2. Identification**  
**of Facilities and Cost Estimates.** This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

**Section 3. Establishment**  
**of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the

benefit of DHR. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by DHR.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as DHR shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by DHR from the Fund for closure and post-closure expenditures in such amounts as DHR shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as DHR specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the

beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to

the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual

Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to DHR a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished the Grantor and DHR shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, DHR, and the present Trustee by certified mail 10 days before such change becomes effective.

Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the DHR to the Trustee shall be in writing, signed by the Secretary of DHR or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or DHR hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or DHR, except as provided for herein.

Section 15. Notice of Payment. The Trustee shall notify DHR of payment to the trust fund by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and DHR, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and DHR, or by the Trustee and DHR, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration

expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act of omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or DHR issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of North Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive heading for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Section 264.151(a)(1) of 10 NCAC 10F.0032(i) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany a trust agreement for a trust fund as specified by Sections 264.143(a) and 264.145(a) or Sections 265.143(a) or

265.145(a) of this chapter.  
State requirements may  
differ on the proper content  
of this acknowledgment.

State of  
County of

On this [date], before me  
personally came [owner or  
operator] to me known, who,  
being by me duly sworn, did  
depose and say that she/he  
resides at [address], that  
she/he is [title] of  
[corporation], the corporation  
described in and which executed  
the above instrument; that  
she/he knows the seal of said  
corporation; that the seal  
affixed to such instrument is  
such corporate seal; that it was  
so affixed by order of the Board  
of Directors of said  
corporation, and that she/he  
signed her/his name thereto by  
like order.

[Signature of Notary  
Public] of Notary Public

(b) A surety bond  
guaranteeing payment into a  
trust fund, as specified in  
Sections 264.143(b) or  
264.145(b) or Sections  
265.143(b) or 265.145(b) of this  
chapter, must be worded as  
follows, except that  
instructions in brackets are to  
be replaced with the relevant  
information and the brackets  
deleted:

#### FINANCIAL GUARANTEE BOND

Date Bond Executed:

Effective Date:

Principal: [legal name and  
business address of owner or  
operator]

Type of organization: [insert  
"individual," "joint venture,"  
"partnership," or  
"corporation,"]

State of Incorporation:

Surety(ies): [name(s) and  
business

address(es)] EPA  
Identification Number, name,  
address, and closure and/or  
post-closure amount(s) for  
each facility guaranteed by  
this bond [indicate closure  
and post-closure amounts  
separately]:

Total penal sum

of bond: \$

Surety's bond number:

Know all Persons by These  
Presents, That we, the  
Principal and Surety(ies)  
hereto are firmly bound to the  
North Carolina Department of  
Human Resources (hereinafter  
called DHR), in the above  
penal sum, for the payment of

which we bind ourselves, our  
heirs, executors,  
administrators, successors,  
and assigns jointly and  
severally; provided that,  
where the Surety(ies) are  
corporations acting as  
co-sureties, we, the Sureties,  
bind ourselves in such sum  
"jointly and severally" only  
for the purpose of allowing a  
joint action or actions  
against any or all of us, and  
for all other purposes each  
Surety binds itself, jointly  
and severally with the  
Principal, for the payment of  
such sum only as is set forth  
opposite the name of such  
Surety, but if no limit of  
liability is indicated, the  
limit of liability shall be  
the full amount of the penal  
sum.

Whereas said Principal  
is required, under the North  
Carolina Solid Waste Management  
Act, to have a permit or  
interim status in order to own  
or operate each hazardous waste  
management facility identified  
above, and

Whereas said Principal is  
required to provide financial  
assurance for closure, or  
closure and post-closure care,  
as a condition of the permit or  
interim status, and

Whereas said Principal  
shall establish a standby trust  
fund as is required when a  
surety bond is used to provide  
such financial assurance;

Now, Therefore, the conditions  
of these obligation are such  
that if the Principal shall  
faithfully, before the beginning  
of final closure of each  
facility identified above, fund  
the standby trust fund in the  
amount(s) identified above for  
the facility.

Or, if the Principal shall  
fund the standby trust fund in  
such amount(s) within 15 days  
after a final order to begin  
closure is issued by DHR or a  
U.S. district court or other  
court of competent jurisdiction,

Or, if the Principal shall  
provide alternate financial  
assurance, as specified in  
Subpart H of 40 CFR Parts 264 or  
265, adopted in North Carolina  
as 10 NCAC 10F .0032(i) and  
.0033(h) respectively, as  
applicable, and obtain DHR's  
written approval of such  
assurance, within 90 days after  
the date notice of cancellation  
is received by both the  
Principal and DHR from the  
Surety(ies), then this  
obligation shall be null and

void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by DHR that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by DHR.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and DHR provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DHR, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by DHR.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of DHR.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute the surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 264.15(b)

of 10 NCAC 10F .0032(i) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation

Liability limit:\$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signatures(s), corporate seal, and other information in the same manner as for the Surety above.]

Bond premium: \$

(c) A surety bond guaranteeing performance of closure and/or post/closure care, as specified in Sections 264.143(c) or 264.145(c), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Effective Date:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These

Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Department of Human Resources (hereinafter called DHR), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only

for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the North Carolina Solid Waste Management Act, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, these conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264, adopted in North Carolina as 10 NCAC 10F .0032(i) and obtain DHR's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and DHR from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become

liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by DHR that the Principal has been found in violation of the closure requirements of 40 CFR Part 264, adopted in North Carolina as 10 NCAC 10F .0032, for a facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by DHR.

Upon notification by DHR that the Principal has been found in violation of the post-closure requirements of 40 CFR Part 264, adopted in North Carolina as 10 NCAC 10F .0032, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the DHR.

Upon notification by DHR that the Principal has failed to provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264, adopted in North Carolina as 10 NCAC 10F .0032, and obtain written approval of such assurance from DHR during the 90 days following receipt by both the Principal and DHR of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by DHR.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to DHR, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DHR, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by DHR

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of DHR.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 264.151(c) of 10 NCAC 10F .0032(i) as such regulation was constituted on the date this bond was executed.

Principal

[Signatures(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Names and address]

State of incorporation:

Liability limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signatures(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

(d) A letter of credit, as specified in Sections 264.143(d) or 264.145(d) or Sections

265.143(c) or 265.145(c) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER  
OF CREDIT

North Carolina Department of  
Human Resources Division of  
Health Services Solid and  
Hazardous Waste Management  
Branch

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U. S. dollars \$ , available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the North Carolina Solid Waste Management Act."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the the signed return receipts.

Whenever this letter of credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Section 264.151(d) of 10 NCAC 10F .0032(i) as such

regulations were constituted on the date shown immediately below. Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"]

(e) A certificate of insurance as specified in Sections 264.143(e) or 264.145(e) or Sections 265.143(d) or 265.145(d) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure or Post-Closure Care Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 264.143(e) and 264.145(e), adopted in North Carolina as 10 NCAC 10F .0032(i), 265.143(d) and 265.145(d), adopted in North Carolina as 10 NCAC 10F .0033(h), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the North Carolina Department of Human Resources (DHR), the Insurer agrees to furnish to DHR a duplicate original of the

policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Section 264.151(e) of 10 NCAC 10F .0032(i) as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person

signing]

[Title of person

signing]

Signature of witness

notary:

[Date]

(f) A letter from the chief financial officer, as specified in Sections 264.143(f) or 264.145(f) or Sections 265.143(e) or 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF

FINANCIAL OFFICER

[North Carolina Department of Human Resources, Solid and Hazardous Waste Management Branch, Post Office Box 2091, Raleigh, N.C. 27602-2091.

I am the chief financial officer of

[name and address of firm].

This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subpart H of 40 CFR Parts 264 and 265, adopted by reference in North Carolina as 10 NCAC 10F .0032(i) and .0033(h), respectively.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. This firm is the owner or operator of the following facilities which are in the State of North Carolina for which financial assurance for closure of post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265 adopted in North Carolina as 10 NCAC 10F .0032(i)

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either

[Fill in Alternative I  
if the criteria of paragraph  
(f)(1)(i) of Sections 264.143 or  
264.145, or paragraph (e)(1)(i)  
of Sections 265.143 or 265.145  
of this chapter are used. Fill  
in Alternative II if the  
criteria of paragraph (f)(1)(ii)  
of Sections 264.143 or 264.145,  
or of paragraph (e)(1)(ii) of  
Sections 265.143 or 265.145 of  
this chapter are used.]

12. Is line 7 at least 6 times line 1?  
 \*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14  
 14. Is line 9 at least 6 times line 1?  
 15. Is line 2 divided by line 4 less than 2.0?  
 16. Is line 8 divided by line 2 greater than 0.1?  
 17. Is line 5 divided by line 6 greater than 1.5?

## ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] \$  
 2. Current bond rating of most recent issuance of this firm and name of rating service  
 3. Date of issuance of bond  
 4. Date of maturity of bond  
 \*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$  
 \*6. Total assets in U. S. (required only if less than 90% of firm's assets are located in the U.S.) \$ Yes No  
 7. Is line 5 at least \$10 million?  
 8. Is line 5 at least 6 times line 1?  
 \*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10  
 10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in Section 264.151(f) of 10 NCAC 10F .0032(i) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(h) A corporate guarantee, as specified in Sections 264.143(f) or 264.145(f) or Sections 265.143(e) or 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### CORPORATE GUARANTEE

#### FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the North Carolina Department of Human Resources (DHR), obligee, on behalf of our subsidiary [owner or operator] of [business address].

Note: All requirements in this document referenced as 40 CFR 264 have been adopted in North Carolina as 10 NCAC 10F .0032, and all requirements

referenced as 40 CFR 265 have been adopted in North Carolina as 10 NCAC 10F .0033.

### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

(2) [Owner or Operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to DHR that in the event that [owner or operator] fails to perform [insert closure, "post-closure care" or "closure and post-closure"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required

to do so, the guarantor shall do so or establish a trust fund as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in Subpart H of 40 CFR Parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the DHR and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the DHR by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the DHR of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Parts 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of 40 CFR Parts 264 and 265 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to DHR and to [owner or operator]. such cancellation to become effective no earlier than 120 days after receipt of such notice by both [owner or operator], as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, and obtain written approval of such assurance from DHR within 90 days after a notice of cancellation by the guarantor is received by DHR from guarantor, guarantor shall provide such alternate financial assurances in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by DHR or by [owner or operator]. Guarantor also expressly waives notice of amendments or modification of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Section 264.151(h) of 10 NCAC 10F .0032(i) as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness

or notary:

(i) A hazardous waste facility liability endorsement as required in Sections 264.147 or 265.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY

LIABILITY ENDORSEMENT

(1) This endorsement

certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147, adopted in North Carolina as 10 NCAC 10F .0032(i) and .0033(h), respectively. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences;" if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.\*

(2) The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f) adopted in North Carolina as 10 NCAC 10F .0032(i) and .0033(h), respectively.

(c) Whenever requested by the North Carolina Department of Human

Resources (DHR) the Insurer agrees to furnish to DHR a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by DHR.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by DHR.

Attached to and forming part of policy No. [insert] issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this day of [month], 19[year]. The effective date of said policy is day of [month], 19[year]. I hereby certify that the wording of this endorsement is identical to the wording specified in Section 264.151(i) of 10 NCAC 10F .0032(i) as such regulation was constituted on the date first above written and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of Authorized Representative of Insurer]  
[Type name]  
[Title. Authorized Representative of  
[name of Insurer]  
[Address of Representative]

\*If the endorsement is for an excess insurance policy, insert the following sentence: "\$ [insert] each occurrence and \$ [insert] annual aggregate in excess of the underlying limits of \$ [insert] each occurrence and \$ [insert] annual aggregate."

(j) A certificate of liability insurance as required in Sections 264.147 or 265.147 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY  
CERTIFICATE OF  
LIABILITY INSURANCE

1. [Name of Insurer],  
(the "Insurer"), of  
[address of Insurer]  
hereby certifies that it

has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147 adopted in North Carolina as 10 NCAC 10F .0032(i) or .0033(h) respectively. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number \_\_\_\_\_, issued on [date]. The effective date of said policy is [date]. The expiration date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:
- (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy with a right of reimbursement by the insured for any such payment made by the Insurer. The provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f), adopted in North Carolina

as 10 NCAC 10F .0032 (i) or .0033(h) respectively.

(c) Whenever requested by DHR the Insurer agrees to furnish to DHR a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by DHR.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by DHR.

I hereby certify that the wording of this instrument is identical to the wording specified in Section 264.151(j) of 10 NCAC 10F .0032(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of authorized representative of Insurer]

[Typed name]

[Title], Authorized

representative of

[Name of Insurer]

[Address of

Representative]

(k) The provisions for "Tanks" contained in 46 Fed. Reg. 2,867, 2,868, 2,895, and 35,249 (1981) [to be codified in 40 CFR 264.190 to 264.200 (Subpart J)] have been adopted by reference as amended by 46 Fed. Reg. 35,249 (1981); 50 Fed. Reg. 2004 (1985); and 51 Fed. Reg. 25,472 to 25,478, and 29,430 (1986).

(q) (2) (D) hazardous waste storage and treatment facilities for liquied waste that is classified as EP toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:

(iii) "In an area that will allow direct surface or subsurface discharge to A± WSI, A±± WAI± or SA

waters or a Class III Reservoir as defined in 15 NCAC 2B .0200 and 10 NCAC 10D .0702(6), which are adopted by reference;"

(q) (4) (A) A hazardous waste landfill, long-term storage or a new surface impoundment facility shall not be located:

(iii) "In an area that will allow direct surface or subsurface discharge to ~~At WSI, At WAI or SA~~ waters or a Class III Reservoir as defined in 15 NCAC 2B .0200 and 10 NCAC 10D .0702(6), which are adopted by reference;"

.0034 INTERIM STATUS  
STANDARDS FOR  
PERMITTING- PART 270

(b) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,233 to 14,241, and 30,114 (1983) [to be codified in 40 CFR 270 (Subpart B, Permit Application)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); 50 Fed. Reg. 2006, 28,751, and 28,752 (1985); and 51 Fed. Reg. 10,176, 16,458, and 25,486 and 29,431 (1986).

(11) 40 CFR 270.20, Specific Part B Information Requirements for Landfill Land Treatment Facilities.

(12) 40 CFR 270.21, Specific Part B Information Requirements for Land Treatment Facilities Landfill.

.0041 REQUIREMENTS: HAZARDOUS  
WASTE PROGRAM - PART 271

The following provisions for the "sharing of information" [to be codified in 40 CFR 271.1 to and 271.17] have been adopted by reference as amended by 50 Fed. Reg. 28,754 (1985) and 51 Fed. Reg. 10,176, and 25,486, 28,685, 29,431, 33,720, 33,721, and 33,722 (1986).

SUBCHAPTER 10G - SOLID  
WASTE MANAGEMENT

SECTION .0700 - ADMINISTRATIVE  
PENALTY PROCEDURES

.0701 ADMINISTRATIVE  
PENALTIES

The following rules provide procedures and standards governing the assessment, remission, mitigation and appeal of administrative penalties imposed by the division under the Solid Waste Management Act, Article 9 of Chapter 130 130A of

the North Carolina General Statutes and 10 NCAC 10G.

.0703 PROCEDURE FOR  
ASSESSMENT: REVOCATION  
OF PERMIT

(c) In addition to any assessment that might be appropriate, the division may suspend or revoke the permit of any facility in accordance with G.S. 130A-23 upon finding that a condition exists which is or may become injurious to the public health or the environment, or upon finding that the facility's permit was issued based upon incorrect or inadequate information that materially affected the permit decision. The permit holder shall be given notice that there has been a tentative decision to suspend or revoke the permit and that an administrative hearing will be held in accordance with the rules contained in ~~10 NCAC 1B .0200~~ at which the permit holder may challenge the permit revocation.

(d) If the violation of the rules or law presents an imminent hazard to the public health or the environment as determined by the division, the permit shall be revoked immediately. Notice of the revocation and the right to appeal shall be given forthwith to the permit holder.

.0704 PAYMENT: HEARING:  
REMISSION/REDUCTION

(a) Within 30 days after receipt of notification of a penalty assessment, the respondent must tender payment, submit in writing a request for an administrative hearing specifying all the factual or legal issues in dispute, or submit in writing a request for an administrative hearing on remission or reduction of the penalty stating the reasons why such request is justified. Where a hearing is requested, it shall be held in accordance with the rules contained in ~~10 NCAC 1B .0200~~ and in G.S. 150A-23 through 150A-52. All appeals shall be made in accordance with G.S. 150B and 10 NCAC 1B.

(b) Where a tentative decision has been made to revoke the permit of a solid waste management facility or where a permit has been revoked, the division shall schedule a hearing to be held within 30 days after the respondent has received notification of the penalty assessment and the tentative decision to revoke his

permit or the revocation of the permit. Such hearing is to be scheduled and conducted in accordance with rules contained in 10 NCAC 1B .0200. At this hearing, the respondent must present all challenges regarding the penalty assessment and permit revocation.

#### .0705 STAY OF PENALTY ASSESSMENT

When an administrative hearing is requested for a purpose other than remission or reduction of the penalty assessed, the penalty will be stayed as of the date the division receives the hearing of receipt of the request by the Office of Administrative Hearings until service of the final decision or other settlement of the matter.

#### .0706 WAIVER OF ADMINISTRATIVE HEARING

(a) The respondent may for good cause, request a continuance of the hearing. The hearing officer will determine if such a continuance should be granted or denied and shall so inform the respondent of his decision at least one day prior to the scheduled hearings.

#### .0707 REFERRAL

If any administrative penalty as finally assessed is not paid within 60 days after receipt of notice of penalty assessment where no administrative hearing was requested or within 60 days after service of a written copy of the decision as provided for in G.S. ~~450A-36~~ 150B-36 where an administrative hearing was requested, the division shall request the Attorney General to commence an action to recover the amount of the assessment.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Mental Health, Mental Retardation and Substance Abuse Services intends to adopt and amend regulations cited as 10 NCAC 14C .1014, .1107, .1125, .1138, .1142, .1146.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S.  
122C-112; 122C-141; 122C-143;  
122C-144; 122C-146; 122C-147;  
122C-150; 122C-271; 143B-10;  
159-8; & S.L. 1981, C. 1007,  
S.L. 1983, C. 864.

The public hearing will be conducted at 10:45 a.m. on February 18, 1987 at The Governor's Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by February 17, 1987. The hearing record will remain open for written comments for 30 days from January 19, 1987 through February 17, 1987. Written comments must be sent to the APA Coordinator at the address specified above by February 17, 1987 and must state the proposed rule or rules to which the comments are addressed.

### CHAPTER 14 - MENTAL HEALTH: GENERAL

#### SUBCHAPTER 14C - GENERAL RULES

#### SECTION .1000 - ACCOUNTING STANDARDS FOR ALL RECIPIENTS OF FUNDS ADMINISTERED BY THE DIVISION

##### .1014 EXPENDITURE OF CATEGORICAL FUNDS

(a) The division shall allow area programs to budget division categorical funds within cost centers that also include, but are not limited to, local funds, area matching funds, federal funds or other division categorical funds. When area programs elect to budget division categorical funds within a cost center with such other funds, the division shall consider the division categorical funds to be expended under the following criteria:

- (1) For all area program operated services, private non-profit group homes, and private non-profit alcohol and drug programs contracted group homes, and other contracted programs receiving at least 40 percent of their funding through the division, the following is the order of expenditure:

(A) special grants from non-divisional sources that are for reimbursement

of the same expenditures as those for which divisional categorical funds are appropriated (examples are grants from R.J. Reynolds, Division of Youth Services - Community-Based Alternative Funds);

(B) block grant funds from the division; and

(C) state categorical funds from the division.

Revenue from non-divisional sources and block grant funds shall be deducted from total cost center expenditures for the purpose of determining the net cost upon which the state categorical share is based. Client-earned income, such as payments received from patients or third parties (insurance, Medicare, Medicaid), which is received but not expended shall be retained by the area program, or the contract program group home, alcohol program or drug program and be used to further the objectives of the legislation establishing the state categorical funding. When client-earned income results in an area program's or contract program's fund balance being in excess of 15 percent of its annual operating budget, the amount in excess of 15 percent shall be handled in accordance with the division's rule on fund balances, Rule .1125 of this Subchapter. When a group home's fund balance is in excess of 15 percent of its annual operating budget, the amount in excess of 15 percent shall be handled in accordance with Rules .1104 - FUNDING GROUP HOMES FOR EMOTIONALLY DISTURBED CHILDREN; .1115 - FUNDING GROUP HOMES FOR MENTALLY RETARDED ADULTS; .1126 - FUNDING GROUP HOMES FOR MENTALLY RETARDED CHILDREN; or .1127 - GROUP HOMES FOR MR BEHAVIORALLY DISORDERED PERSONS of this Subchapter. When an alcohol program or drug program receiving at least 40 percent of its funding through the division has a fund balance in excess of 15 percent of its annual operating budget, excluding restricted donations, the division's participation shall be reduced by the

amount in excess of 15 percent.

- (2) For other contracted programs not receiving at least 40 percent of their funding through the division, state categorical fund expenditures shall be based upon net cost determined by reducing total project cost by program-generated income and/or special grants from non-divisional sources and block grant funds that are received by the contractor as reimbursement of the same expenditures as those for which categorical funds are appropriated. Program-generated income is payment received from patients or third parties for services provided and fees received for personal services performed in connection with the categorical grant.

## SECTION .1100 - STATE FEDERAL FUNDS ADMINISTERED

### .1107 COMMUNITY SUBSTANCE ABUSE FUNDS

(b) Community substance abuse funds may be utilized for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life. Programs operated by an area program or contract programs of the area program are eligible for funding of the following expenditures:

- (1) staffing;
- (2) travel;
- (3) supplies;
- (4) administrative and program equipment;
- (5) rent or lease of a residential facility;
- (6) other necessary program needs as approved by the division; and
- (7) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(c) Community Substance Abuse Funds may be used for the purchase, construction and/or alteration, improvement or repair of a residential facility by the area program or a nonprofit board with division approval. The program shall meet the following requirements:

- (1) The Residential Facility Mortgage Payment Program. The division may participate in the mortgage payment

- program in part or total contingent upon the availability of state funds.
- (2) The Residential Facility Purchase/Construction Program.
- (A) The division may participate in the down payment and/or lump sum purchase/construction of a residential facility in whole or part contingent upon the availability of state funds.
- (B) The area program or nonprofit board shall secure two property appraisals for review and approval by the division prior to purchase.
- (C) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.
- (3) A request for initial renovation of a newly acquired facility of five thousand dollars (\$5000) or less shall be submitted to the appropriate regional office of the division for approval. Initial minor repairs to facilities of less than one thousand dollars (\$1000) shall be approved by the area program.
- (4) A request for alteration or improvement of an existing facility in excess of five thousand dollars (\$5000) shall be forwarded to the division director's office through the appropriate regional office of the division for approval.
- (5) Each request as outlined in (c) (2) and (4) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.
- (6) If the residential facility is operated by a nonprofit board, the area

- program shall sign a legally binding contract with the private nonprofit agency for either the mortgage payments to be made or the purchase/construction program as indicated in (c) (1) and (2) of this Rule. A copy of the appropriate contract shall be obtained from the Fiscal Services Branch of the central office of the division.
- (7) If a facility owned by an area program or its private nonprofit contract agency was purchased, altered, improved or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private nonprofit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the division. The division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the division in the purchase, alteration, improvement or rehabilitation. If an area program or its contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for Community Substance Abuse Funds, the area program or its contract program shall pay to the division a pro rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the division based on contribution made by the division in the purchase alteration, improvement or rehabilitation of the facility. This provision may be waived by the division director upon written request of the program. The area program shall maintain records on a continuous bases which reflect the amount of contribution for purchase, alteration, improvement or rehabilitation by the division, area program and/or other funding entity.
- (d) Fund Balance. The division may allow area programs or contract programs to maintain a fund balance of no more than

15 percent of the current annual budget in accordance with Rule .1125 of this Section.

(c) (e) For an area program to apply for community substance abuse funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the division.

(d) (f) Based on the annual plan and budget submitted and availability of these funds, allocations shall be made yearly among area programs by the director of the division or his designee.

**.1125 FUND BALANCE: AREA PROGRAMS/CONTRACT PROGRAMS**

(a) In order for the division to have input into the actions regarding fund balances in area programs and contract programs as provided for in Rule .1014 of this Subchapter, the following shall take place after the certified public accountant's audit report is rendered and the tentative settlement report prepared:

(1) The fund balance set forth within the annual audit of area programs and contract programs shall be verified by the division.

(b) The reduction of financial support by the division to area programs and contract programs may be decreased and/or delayed if there are extenuating circumstances which, in the opinion of the division director, warrant relaxation of this policy. Any action taken in regard to (b) of this Rule shall be documented in writing.

**.1138 COMMUNITY SUPPORT SERVICES FOR CHRONICALLY MENTALLY ILL**

(a) The division shall maintain a program of grants to area programs for the purpose of providing community based support day programs services for chronically mentally ill adults and elderly individuals. The day If the programs funded with these grants are day/night programs they shall meet the standards for Community Support Programs for Adults and Elderly Individuals Who Are Chronically Mentally Ill as codified in 10 NCAC 18P Section .0500. These funds may not be used for support of inpatient services.

(b) Funds for community support day program services for the chronically mentally ill shall

be administered to those Not less than three hundred seventy-four thousand dollars (\$374,000) annually plus applicable inflation and salary increase funds appropriated by the Legislature shall be spent to operate community support day/night services programs in area programs which have a program operating (Mountainhouse - Blue Ridge Area Program; Sunshine House - New River Area Program; Piedmont Pioneer House - Gaston/Lincoln Area Program) in an amount not to exceed twenty thousand dollars (\$20,000) plus applicable inflation and salary increase funds per program per year. Funds may also be administered to new programs, but support for each new program shall not exceed fifty thousand dollars (\$50,000) per year plus applicable inflation and salary increase funds.

(c) Programs operated by an area program or programs of the area program are eligible for funding of the following expenditures:

- (1) staffing;
- (2) travel;
- (3) supplies;
- (4) administrative and program equipment;
- (5) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life (these funds shall not be used for purchase of real property); and
- (6) other program needs as approved by the division.

(d) The expenditure for rent or lease of real property shall not be covered with funds for community support services for the chronically mentally ill.

(e) Funds shall be granted to the programs on the basis of applications which include a demonstration of local investment, need, and readiness to improve services. Examples of local investment are citizens' interest, volunteer efforts and financial support.

(c) Funds for community-based support services for the chronically mentally ill not referenced in (b) of this Rule may be used to provide an array of services for the chronically mentally ill including, but not limited to, case management, emergency services, crisis stabilization, residential services and community support day programs as described in (b)

of this Rule. Programs receiving funds for community-based support services shall meet the applicable standards for the particular service as codified in 10 NCAC 18I through 18Q. These funds shall be administered to area programs on a per capita basis utilizing the most current population data available from Office of State Budget and Management. These funds shall be expended as follows:

- (1) Programs operated by an area program or contract programs of the area program are eligible for funding of the following expenditures:
  - (A) staffing;
  - (B) travel;
  - (C) supplies;
  - (D) administrative and program equipment;
  - (E) other program needs as approved by the division; and
  - (F) repairs and maintenance of facilities, other than residential facilities which are governed by (c) (2) of this Rule, which represent normal upkeep and do not materially increase the value of the facility or extend its useful life. Except for residential facilities as provided for in (c) (2) of this Rule, these funds shall not be used for purchase of real property.

- (2) Funds for community-based support services for the chronically mentally ill may be used for the purchase, construction and/or alteration, improvement or repair of a residential facility by the area program or a non-profit board with division approval. The program shall meet the requirements of the following:

(A) The Residential Facility Mortgage Payment Program. The division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.

(B) The Residential Facility Purchase/Construction Program.

- (i) The division may participate in the down payment and/or lump sum purchase/construction of a residential facility

in whole or part contingent upon the availability of state funds.

- (ii) The area program or non-profit board shall secure two property appraisals for review and approval by the division prior to purchase.

- (iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

- (C) A request for initial renovation of a newly acquired residential facility of five thousand dollars (\$5000) or less shall be submitted to the appropriate regional office of the division for approval. Initial minor repairs to residential facilities of less than one thousand dollars (\$1000) shall be approved by the area program.

- (D) A request for alteration or improvement of an existing residential facility in excess of five thousand dollars (\$5000) shall be forwarded to the division director's office through the appropriate regional office of the division for approval.

- (E) Each request as outlined in (c) (2) (B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

- (F) If the residential facility is operated by a non-profit board, the area program shall sign a legally binding contract with the private non-profit agency for

either the mortgage payments to be made or the purchase/construction program as indicated in (c) (2) (A) and (B) of this Rule. A copy of the appropriate contract shall be obtained from the Fiscal Services Branch of the central office of the division.

(G) If a residential facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the division. The division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the division in the purchase, alteration, improvement or rehabilitation. If an area program or its non-profit contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for Community Support Services for Chronically Mentally Ill, the area program or its contract program shall pay to the division a pro rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the division based on contribution made by the division in the purchase, alteration, improvement or rehabilitation of the facility. This provision may be waived by the division director upon written request of the program. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the division, area program and/or other funding entity.

(d) Fund Balance. An allowance for a fund balance for area programs or contract programs is made in Rule .1125 of this Section.

(e) Application for an allocation of both types of community support funds shall be as follows:

(f) (1) To apply for funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the division.

(g) (2) Funds shall be allocated by the director of the division among the regional offices.

(h) (3) Based on the annual plan and budget submitted and availability of funds, allocation of funds for area programs within each region shall be made by the division director or his designee.

#### .1142 ALLOCATION OF OUTPATIENT COMMITMENT FUNDS

(c) The appropriate regional office of the division shall allocate funds to area programs based on an actual commitment basis, not to exceed the amount as approved by the legislature per year per case. Area programs shall complete the "Outpatient Involuntary Commitment Reimbursement" form each month to receive reimbursement. Reimbursement shall be made as follows:

(5) Reimbursement requests shall be submitted to the regional office for payment within 90 days after the month in which service is rendered. Reimbursement requests submitted after 90 days may be paid based upon availability of funds and division approval.

#### .1146 RESIDENTIAL FACILITIES FOR CHRONICALLY MENTALLY ILL ADULTS

(a) Pursuant to G.S. 122C-150, the division shall administer a program of grants to area programs to be called funds for residential facilities for chronically mentally ill adults.

(b) Such grants shall be used to support residential facilities for chronically mentally ill adults.

(c) Funds for residential facilities for chronically mentally ill adults shall be administered to area programs as

direct grants and do not require local matching.

(d) Programs operated by an area program or contract programs of the area program may spend funds for residential facilities for chronically mentally ill adults for the following:

- (1) staffing;
- (2) to rent or lease residential facilities;
- (3) furniture or specialized equipment for residents;
- (4) transportation of residents;
- (5) other necessary operating expenses as approved by the division;
- (6) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life;

(e) Funds for residential facilities for chronically mentally ill adults may be used for the purchase, construction and/or alteration, improvement or repair of a residential facility by the area program or a non-profit contract program with division approval. The program shall meet the requirements of the following:

- (1) The Residential Facility Mortgage Payment Program. The division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.
- (2) The Residential Facility Purchase/Construction Program.
  - (A) The division may participate in the down payment and/or lump sum purchase/construction of a residential facility in whole or part contingent upon the availability of state funds.
  - (B) The area program or non-profit board shall secure two property appraisals for review and approval by the division prior to purchase.
  - (C) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.
- (3) A request for initial renovation of a newly acquired residential facility of five thousand

dollars (\$5000) or less shall be submitted to the appropriate regional office of the division for approval. Initial minor repairs to facilities of less than one thousand dollars (\$1000) shall be approved by the area program.

- (4) A request for alteration or improvement of an existing residential facility in excess of five thousand dollars (\$5000) shall be forwarded to the division director's office through the appropriate regional office of the division for approval.
- (5) Each request as outlined in (e) (2) and (4) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.
- (6) If the residential facility is operated by a non-profit board, the area program shall sign a legally binding contract with the private non-profit agency for either the mortgage payments to be made or the purchase/construction program as indicated in (e) (1) and (2) of this Rule. A copy of the appropriate contract shall be obtained from the Fiscal Services Branch of the central office of the division.
- (7) If a residential facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the division. The division shall be reimbursed a pro rata share of the proceeds of the sale

based on the percent of contribution made by the division in the purchase, alteration, improvement or rehabilitation. If an area program or its non-profit contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for Residential Facilities for chronically mentally ill adults the area program or its contract program shall pay to the division a pro rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the division based on contribution made by the division in the purchase, alteration, improvement or rehabilitation of the facility. This provision may be waived by the division director upon written request of the program. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the division, area program and/or other funding entity.

(f) Fund balance. The division may allow area programs or contract programs to maintain a fund balance of no more than 15 percent of the current annual budget in accordance with Rule .1125 of this Section.

(g) To apply for funds for residential facilities for chronically mentally ill adults, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the division.

(h) Funds for residential facilities for chronically mentally ill adults shall be allocated among the regions of the division by the division director.

(i) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for emotionally disturbed adults to area programs within each region shall be made by the division director or his designee.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Commission for the

Blind, Division of Services for the Blind intends to amend regulations cited as 10 NCAC 19C .0505; 10 NCAC 19H .0102; .0105.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 111-8; 111-13; 111-27; 143B-157.

The public hearing will be conducted at 10:00 a.m. on March 7, 1987 at Conference Room, N.C. Division of Services for the Blind, 309 Ashe Avenue, Fisher Building, Raleigh, North Carolina 27606.

Comment Procedures: Interested persons may present his statements either orally, (for no more than 3 minutes), at the public hearing or in writing at or prior to the public hearing by mail addressed to Mr. Herman O. Gruber, Director, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, N.C. 27606. If any person desires to speak at the public hearing the Director of the Division of Services for the Blind should be notified three days prior to the public hearing.

#### SUBCHAPTER 19C - BUSINESS ENTERPRISES PROGRAM

##### SECTION .0500 - ELECTION: ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE STAND PROGRAM

###### .0505 COMMITTEE SIZE

The number of representatives from each region is based on the number of operators facilities in a region, as follows:

- (1) 1-10 operators facilities --one representative;
- (2) an additional representative for each additional 10 operators facilities, or any part thereof.

#### SUBCHAPTER 19H - MEDICAL/EYE CARE PROGRAM

##### SECTION .0100 - CERTIFICATION

###### .0102 ELIGIBILITY CRITERIA

(a) A North Carolina resident is eligible to receive services if:

- (1) The services are not covered by the North Carolina Medical Assistance (medicaid program); or
- (2) The resident is a medicaid recipient on a spend-down who qualifies

under the appropriate income criterion; or

- (3) The services cannot be reimbursed by any other state or federal program providing eye care.

(b) If the resident is a preschool child or school age child, the family's annual net income cannot exceed the amounts as set out in S.L. 1985, Chapter 479 s. 87. The economic needs schedule utilized by the agency is on file at the Division of Services for the Blind, 309 Ashe Avenue, Raleigh, N.C. 27606, and copies can be obtained at any of the Division of Services for the Blind Field offices. For purposes of eligibility determination-

(1) Income is considered all monetary receipts.

(2) Net income is the amount remaining after federal and state withholding taxes, social security taxes and cost of medical and hospital insurance borne by the family have been deducted.

(c) If the resident is an adult, the family's annual net income can not exceed the amount set out in S.L. 1985, Chapter 479 s. 87. The economic needs schedule utilized by this agency is on file at the Division of Services for the Blind, 309 Ashe Avenue, Raleigh, N.C. 27606, and copies can be obtained at any of the Division of Services for the Blind field offices.

(d) For purposes of eligibility determination-

(1) Income is considered all monetary receipts.

(2) Net income is the amount remaining after deducting-

(A) work related expenses as cost of transportation, lunches eaten at work, child care, and hospitalization and medical insurance;

(B) compulsory deductions as federal and state withholding taxes, social security taxes, and city county property taxes; and

(C) unusual expenses necessary to the family as certain educational expenses, support of dependents outside of the home, all medical bills over ten dollars (\$10.00) per month, and all dental bills incurred within six months.

(e) The income tables for child and adult categories are set by the General Assembly and can be found in the Medical/Eye Care Program Manual located in

the Division of Services for the Blind Office at ~~410 North Boylan Avenue,~~ 309 Ashe Avenue, Raleigh, all services for the blind regional offices, and all county department of health and social services. Services for the Blind office hours at are 7:30 a.m. to 4:30 p.m. Monday through Friday.

#### .0105 RETROACTIVE CERTIFICATION

The Division may accept liability for emergency inpatient and outpatient surgery and hospital services and plus other services or treatment provided prior to certification if:

(1) Services were received no more than 90 days before application;

(2) the person was eligible at the time the services were performed, and

(3) the services were those covered by this program.

Surgery and hospitalization not of an emergency nature requires prior approval.

Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Division of Services for the Blind intends to amend regulations cited as 10 NCAC 19C .0702.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 111-12.5; 111-27.

The public hearing will be conducted at 10:00 a.m. on March 7, 1987 at Conference Room, N.C. Division of Services for the Blind, 309 Ashe Avenue, Fisher Building, Raleigh, North Carolina 27606.

Comment Procedures: Interested persons may present his statements either orally, (for no more than 3 minutes), at the public hearing or in writing at or prior to the public hearing by mail addressed to Mr. Herman O. Gruber, Director, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, N. C. 27606. If any person desires to speak at the public hearing the Director of the Division of Services for the Blind should be notified three days prior to the public hearing.

SUBCHAPTER 19C - BUSINESS ENTERPRISES PROGRAM

SECTION .0700 - EARNINGS:  
FUNDS: AND PROCEEDS

.0702 SET-ASIDE

(b) The division will set

aside no more than a total of twenty percent of the funds from the net proceeds of each stand operation to be used for the following purposes:

	Estimated Percentage
(1) maintenance and replacement of equipment	3.91%
(2) purchase of new equipment	4.35%
(3) management services	7.39%
(4) assuring a fair minimum return to operators	4.35%
(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind operators licensed by the division, after the division provides to each such operator information on all matters relevant to such proposed purposes.	

rule or rules to which the comments are addressed.

The percentage, to be determined in advance, will vary from facility to facility depending upon the nature and scope of the accounting services rendered by the Division of Services for the Blind to the individual facility.

CHAPTER 45 - NORTH CAROLINA  
DRUG COMMISSION

SUBCHAPTER 45G - MANUFACTURERS;  
DISTRIBUTORS: DISPENSERS AND  
RESEARCHERS OF CONTROLLED  
SUBSTANCES

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Mental Retardation and Substance Abuse Service intends to amend regulations cited as 10 NCAC 45G .0301 and 10 NCAC 45H .0202.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 90-88; 90-89; 90-100; 90-106; 143B-147.

The public hearing will be conducted at 10:45 a.m. on February 18, 1987 at The Governor's Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, N.C..

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by February 17, 1987. The hearing record will remain open for written comments for 30 days from January 19, 1987 through February 17, 1987. Written comments must be sent to the APA Coordinator at the address specified above by February 17, 1987 and must state the proposed

SECTION .0300 - PRESCRIPTIONS

.0301 PRESCRIPTION  
REQUIREMENTS GENERALLY

Compliance with the prescription requirements of the federal law, including the requirements presented in Part 1306 of Title 21 of the Code of Federal Regulations, shall be deemed compliance under General Statute Chapter 90, Article 5. except the transfer of original prescription information for a controlled substance listed in schedules III, IV, or V for the purpose of refill dispensing is not permissible between pharmacies at any time.

SUBCHAPTER 45H - DRUG TREATMENT  
FACILITIES

SECTION .0200 - SCHEDULES OF  
CONTROLLED SUBSTANCES

.0202 SCHEDULE I

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers salts and salts or of isomers, esters and ethers wherever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(31) 3-methylfentanyl (N-  
[3-methyl-1-(2-phenylethyl)-  
4-piperidyl]-N-phenylpro-  
panamide).

9813

TITLE 11 - DEPARTMENT OF  
INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to amend regulations cited as 11 NCAC 8 .0203; repeal 11 NCAC 8 .0204-.0210.

The proposed effective date of this action is August 1, 1987.

Purpose of proposed rule: The above APA Rules that are proposed for repeal and amendment attempt to incorporate by reference the N.C. State Building Code. Since incorporation by reference of an agency's own rules into its administrative code is not allowed under the provisions of NCGS 150B-14, and further since NCGS 150B-2(8)h specifically states that the definition of rule does not include scientific, architectural, and engineering standards, forms, and procedures, and further since the N.C. State Building Code is comprised of scientific, architectural, and engineering standards, the N.C. State Building Code Council proposes to amend and repeal the above referenced rules in order to comply with a formal request by the Administrative Rules Review Commission that the incorporations by reference be deleted.

The amendment and repeals are merely technical corrections and in no way affect the force or validity of the N.C. State Building Code.

The N.C. State Building Code Council will take final action on the proposed changes on June 9, 1987 at 10:00 a.m. at their meeting which will be held in room 700 of the Wake County Courthouse in Raleigh.

Statutory Authority: G.S. 143-138.

The public hearing will be conducted at 10:00 a.m. on March 10, 1987 at Auditorium, Environmental Health Building, 1200 Blythe Blvd., Charlotte, North Carolina.

Comment Procedures: Direct all written comments to Lee Hauser, Secretary, N.C. State Building Code Council, Post Office Box 26387, Raleigh, N.C., 27611. Mr. Hauser may be reached by telephone at (919) 733-3901.

CHAPTER 8 - ENGINEERING AND  
BUILDING CODES

SECTION .0200 - NORTH CAROLINA  
STATE BUILDING CODE

.0203 BUILDING CODE  
PUBLICATIONS; GENERAL  
INFORMATION

(a) All volumes of the North Carolina State Building Code are published under the direction of the North Carolina Department of Insurance. All volumes of the code are updated annually and supplements containing amendments and other pertinent information are also published and filed with the State Attorney General.

(b) Copies of the various volumes of the building code may be obtained from: Department of Insurance, ATTENTION: Engineering and Building Codes Division, P. O. Box 26387, Raleigh, North Carolina 27611. Information regarding cost of the publications may be obtained at the same address. Costs are based upon the cost to the department of publication, distribution and annual revisions. The code is incorporated herein by reference.

.0204 BUILDING CODE: VOLUME  
I: GENERAL CONSTRUCTION  
(REPEALED)

.0205 BUILDING CODE: VOLUME  
IB: UNIFORM RESIDENTIAL  
CODE (REPEALED)

.0206 BUILDING CODE: VOLUME  
II: PLUMBING (REPEALED)

.0207 HEATING: AIR  
CONDITIONING;  
REFRIGERATION AND  
VENTILATION (REPEALED)

.0208 BUILDING CODE: VOLUME  
IV: ELECTRICAL  
(REPEALED)

.0209 REGULATIONS FOR MOBILE  
HOMES (REPEALED)

.0210 BUILDING CODE:  
HANDICAPPED SECTION  
(REPEALED)

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Alarm Systems Licensing Board intends to amend regulations cited as 12 NCAC 11 .0103; .0104; .0107; .0201;

.0202; and .0204; .0206; .0301; .0306.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 74D-2, 3, 5, 6, 7, 8, 10.

The public hearing will be conducted at 1:00 p.m. on March 10, 1987 at McKimmon Center, Gorman Street & Western Blvd., Raleigh, NC, (room will be posted at the site).

Comment Procedures: Any interested person may present his or her views and comments in writing 10 days prior to the hearing. Please send all information to Mr. Jim Kirk, N.C. Alarms Systems Licensing Board, P. O. Box 29500, Raleigh, N.C. Any person may request information or copies of the proposed rules by calling (919) 779-1611.

#### CHAPTER 11 - N. C. ALARM SYSTEMS LICENSING BOARD

#### SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

##### .0103 DEFINITIONS

In addition to the definitions under G.S. Chapter 74D, the following definitions shall apply throughout this Chapter:

- (1) "Applicant" means any person, firm, or corporation applying to the board for a license or registration.
- (2) "Board" means the Alarm Systems Licensing Board established by G.S. Chapter 74D.
- (3) "Branch Manager or Operator" means the licensee endowed with the responsibility and liability for a branch office.
- (4) "Branch Office" means a separate but dependent part of a central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office.
- (5) "Chairman" means the Chairman of the Alarm Systems Licensing Board.
- (6) "Installs" means placing an alarm device in a residential or commercial location and shall include demonstrating the utilization of an alarm system device for a specific location and function within the protected premises and with such knowledge of the alarm system

operation, delivering that device to the owner or operator of the protected premises.

(6) "Employee" includes any individual employed by an employer.

(7) "Licensee" means any person licensed pursuant to G.S. Chapter 74D.

(7) "Installs" means placing an alarm device in a residential or commercial location and shall include demonstrating the utilization of an alarm system device for a specific location and function within the protected premises and, with such knowledge of the alarm system operation, delivering that device to the owner or operator of the protected premises.

(8) "Responds" means receiving a monitored alarm signal that indicates the existence of an unauthorized intrusion or taking from the premises of a customer and being required by contract to take action upon receipt of that alarm signal.

(8) "Knowledge of Specific Application" means obtaining specific information about the premises which is protected or is to be protected, such knowledge gained during an on-site visit.

(9) "Services" means inspecting, testing, repairing or replacing an alarm system device within protected premises.

(9) "Licensee" means any person licensed pursuant to G.S. Chapter 74D.

(10) "Monitors" means receiving a continuous signal from protected premises or contracting with a person, firm or corporation to provide accessible equipment and personnel to receive a signal from an alarm device in a residential or commercial location and take certain action in response.

(11) "Qualifying Agent" means any person who meets the requirements of G.S. 74D-2(c), provided that no licensee may act as qualifying agent for more than one alarm systems business without prior authorization of the board.

(12) "Responds" means receiving a monitored alarm signal that indicates the existence of an unauthorized

intrusion or taking from the premises of a customer, and being required by contract to take action upon receipt of that alarm signal.

(13) "Services" means inspecting, testing, repairing or replacing an alarm system device within protected premises.

#### .0104 DISCIPLINARY ACTIONS

(c) A notice of any disciplinary action shall be sent to the employer of the holder, if the holder is employed by a licensee the qualifying agent and the holder.

#### .0107 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) The Model Administrative Procedures for Rule-Making and Hearings, codified as Title 22, Subchapter 2B and 2C of the North Carolina Administrative Code effective September 29, 1980; are hereby adopted by reference to apply to actions of the Alarm Systems Licensing Board and as amended February 1, 1986, are hereby adopted by reference to apply to actions of the Alarm Systems Licensing Board.

#### SECTION .0200 - PROVISIONS FOR LICENSEES

##### .0201 APPLICATION FOR LICENSE

(a)  
(2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification one inch by one inch in size;

##### .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a)  
(1) Establish to the Board's satisfaction one two years experience within the past five years in an alarm systems business as defined in G.S. 74D-2(a); alarm systems installation and service or;  
(2) Successfully complete either the SP-LV, limited intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors, pass an oral or written examination deemed by the board to measure an individual's knowledge and competence in the alarm systems business;  
(3) Successfully complete

either the SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors.

(b) Applicants engaged exclusively in monitoring or responding to alarms may be issued a limited license which authorizes the performance of monitoring and responding functions only. Applicants for such a limited license shall not be required to meet the experience requirements of 12 N.C.A.C. Chapter 11 .0202(a).

##### .0204 RENEWAL OR RE-ISSUE OF LICENSES

(a)  
(1) a two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size;  
(2) the applicant's renewal fee, statements of the result of a local criminal history records search by the City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediate preceding twelve months; and  
(3) the applicant's renewal fee.

##### .0206 RECORDS INSPECTION

(b) All licensees having registered employees shall submit a copy of their current quarterly Employment Security Commission NCUI 101-625 to the Administrator's office at the same time the form is submitted to the Employment Security Commission; and an additional list of non-Employment Security Commission employees currently employed by the licensee with the dates of employment. Those licensees who do not submit an Employment Security Commission NCUI 101-625 shall submit the names of their employees on a form provided by the board.

#### SECTION .0300 - PROVISIONS FOR REGISTRANTS

##### .0301 APPLICATION FOR REGISTRATION

(a) Each applicant for registration or his employer shall complete an application form provided by the Board. Each employer or his designee shall submit and sign an application form for the registration of his employee on

a form provided by the board. This form, when sent to the board, shall be accompanied by a set of classifiable fingerprints on a standard F.B.I. applicant card, two recent head and shoulders color photographs of acceptable quality for identification one inch by one inch in size, statements of the results of a local criminal history records search by the City-County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediate preceding 24 months and the registration fee required by 12 N.C.A.C. Chapter 11 .0302.

.0306 RENEWAL OR RE-ISSUE OF REGISTRATION

(a)

(1) two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size; and

(2) the applicant's renewal fee; statements of the result of a local criminal history records search by the City/County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediate preceding twelve months;

(3) the applicant's renewal fee; and

(4) proof of liability insurance pursuant to G.S. 74D-9.

(b)

(1) two recent head and shoulders color photographs of acceptable quality for identification one inch by one inch in size; and

TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend regulations cited as 15 NCAC 7H .0602; 7K .0203.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 113A-103; 113A-118; 113A-124.

The public hearing will be conducted at 10:00 a.m. on February 19, 1987 at Marine Fisheries Building, 3411 Arendell Street, Morehead City, NC.

Comment Procedures: Written Comments may be submitted within 30 days prior to hearing to:

Portia Rochelle  
Division of Coastal Management  
P.O. Box 27687  
Raleigh, NC 27611

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECS

.0602 POLLUTION OF WATERS

No development shall be allowed in any AEC which would have a substantial likelihood of causing pollution of the waters of the state in which shellfishing is an existing use to the extent that such waters would be officially closed to the taking of shellfish. under standards set by the commission for health services pursuant to ~~G.S. 130-169.01.~~

SUBCHAPTER 7K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

.0203 PRIVATE BULKHEADS:

RIPRAP: PIERS EXEMPTED

(a) The N.C. Coastal Resources Commission hereby exempts from the Coastal Area Management Act permit requirement work in the estuarine shoreline and public trust waters areas of environmental concern necessary to maintain, repair, and construct private bulkheads with backfill and to place riprap material along shorelines, and construct piers and/or mooring facilities in waters of North Carolina. This exemption is subject to the following conditions and limitations:

(1) The activities exempted by this regulation shall be private, non-commercial activities conforming to the standards and conditions contained in this regulation. This exemption does not apply to bulkheads with backfill and or placement of riprap material development associated with multi-unit residential

developments larger than duplexes, nor to, marinas, commercial harbors, community or neighborhood boat access, fish houses or similar commercial activities.

(c) Piers: Conditions

(4) Piers authorized by this exemption shall be for the exclusive use of the land owner, and shall not provide either leased or rented docking space or any other commercial services. Piers and mooring facilities designed to provide docking space for more than four boats shall, because of their greater potential for adverse impacts, be reviewed through the permitting process, and are, therefore, not authorized by this exemption.

#### TITLE 21 - LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Architecture intends to amend regulation cited as 21 NCAC 2 .0108.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 83A-4; 83A-6.

The public hearing will be conducted at 2:00 p.m. on February 24, 1987 at 501 North Blount Street, Raleigh, North Carolina 27604.

Comment Procedures: Written comments, opinions and arguments concerning these amendments must be submitted by February 19, 1987 to Cynthia Skidmore, Executive Secretary, North Carolina Board of Architecture, 501 North Blount Street, Raleigh, North Carolina 27604. Oral comments for no more than 10 minutes may be presented at the hearing.

#### CHAPTER 2 - NORTH CAROLINA BOARD OF ARCHITECTURE

##### SECTION .0100 - GENERAL PROVISIONS

###### .0108 FEES

Fees required for individual and corporate applications, publications, or services of the Board are payable in advance to the treasurer of the Board. Current amounts are:

#### Initial Application

Individual	
Residents	\$25.00
Nonresidents	\$50.00
Corporate	\$50.00
Re-examination	\$50.00

#### Annual license renewal

Individual	\$40.00
Corporate	\$50.00

#### Late renewal Penalty

	\$50.00
Up to 30 days	<del>\$10.00</del>
<del>\$10.00</del> per month thereafter	<del>\$50.00</del>
	maximum

Reciprocal registration \$75.00

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Certified Public Accountant Examiners intends to adopt regulation cited as 21 NCAC 8A .0113, repeal regulation 21 NCAC 8B .0103, amend regulations 21 NCAC 8A .0101; 8B .0101; .0105; 8D .0202; 8F .0103; .0304; 8G .0101; .0112; .0201-.0203; and .0208-.0211; .0401; 8H .0001; .0003; 8I .0005; 8J .0001; 8K .0201.

The proposed effective date of this action is June 1, 1987.

Statutory Authority: G.S. 93-12.

The public hearing will be conducted at 9:00 a.m. on Friday, March 13, 1987 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, North Carolina 27605.

Comment Procedures: Any person interested in this Rule may present written or oral comments relevant to the action proposed at the public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by 12:00 noon, March 10, 1987. Written statements not presented at the public hearing should be delivered to the board offices not later than April 13, 1987.

#### CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

##### SUBCHAPTER 8A - DEPARTMENTAL RULES

##### SECTION .0100 - ORGANIZATIONAL RULES

###### .0101 FORMAL NAME

The formal name for the agency North Carolina Board of Certified Public Accountant Examiners is the State Board of

Certified Public Accountant Examiners. The informal and acceptable title of the board is the North Carolina State Board of Certified Public Accountant CPA Examiners.

#### SUBCHAPTER 8B - RULE-MAKING PROCEDURES

##### SECTION .0100 - PETITIONS FOR RULE-MAKING

###### .0101 PETITIONS

Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the North Carolina State Board of Certified Public Accountant Examiners shall address a petition to the president Executive Director, North Carolina State Board of Certified Public Accountant Examiners, as set forth in Subchapter 8A .0102.

###### .0103 AMENDMENT OR REPEAL (REPEALED)

###### .0105 GRANTING OR DENYING PETITIONS

The President Executive Director of the North Carolina State Board of Certified Public Accountant Examiners shall make a recommendation to the board Enforcement Committee of the board and it shall recommend to the full board, based on a study of the facts stated in the petition, whether the public interest will be better served by granting or denying the petition. He or she The board will consider all the contents of the submitted petitions petition plus any additional information deemed relevant.

#### SUBCHAPTER 8D - CONDUCT OF THE CONTESTED CASE

##### SECTION .0200 - PRE-HEARING CONFERENCE

###### .0202 PURPOSES

The purpose of the pre-hearing conference will be to discuss the following:

- (1) the possibility of simplification of the issues,
- (2) the elimination of issues to be contested at the hearing,
- (3) the stipulations of facts or findings by the parties,
- (4) the identification of areas where evidence will be needed,
- (5) the acceptance of the validity of proposed evidence,

- (6) an indication of the need for depositions or subpoenas, needed
- (7) the acceptance of the findings in some other case with relevance to the case at hand,
- (8) the need for consolidation of cases or joint hearings, and
- (9) any other matters which will reduce cost or save time or otherwise aid in the expeditious disposition of the contested case.

#### SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

##### SECTION .0100 - GENERAL PROVISIONS

###### .0103 SUBMISSION OF EXAMINATION APPLICATIONS AND FEES

(a) The board shall announce the time and place for holding each examination at least 60 days prior to the date thereof; and all applications for examinations must be made to the board, accompanied by a check for the amount of the examination fee and made payable to the North Carolina State Board of Certified Public Accountant Examiners.

(b) Such applications shall be postmarked not later than the last day of February for the spring examination, and not later than the last day of August for the fall examination, unless one of those dates falls on a weekend or federal holiday, in which case the application must be postmarked or received in the board office on the next business day. Only U.S. Postal Service cancellations will be considered as the postmarks.

(c) Applicants for initial examination will be required to have submit official transcripts from their schools and experience affidavits (if required for qualifying to be examined) on file with the board not later than March 15 and September 15 with their applications or have them filed by the dates set out in Paragraph (b) of this Rule. Three certifications of good moral character signed by persons acceptable to the board shall be submitted by the dates set out in Paragraph (b) of this Rule.

(d) Three certifications of

good moral character signed by persons acceptable to the board shall be submitted by the dates set out in Paragraph (b) of this Rule.

(e) All applications for reexamination must include three new certificates of moral character, which shall be signed by persons acceptable to the board. No additional statements and affidavits regarding experience and education will be required.

#### SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

##### .0304 EQUIVALENCY EXAMINATIONS

(a) The board may waive the education requirements specified in 21 NCAC 8F .0302 and .0402 upon receipt of proof acceptable to the board that the applicant has scored:

- (1) in the 50th percentile rank or higher on each part of either the Graduate Record Examination or the Graduate Management Admission Test; and
- (2) in the 50th percentile rank or higher on the Level II Achievement Test of the American Institute of Certified Public Accountants.

#### SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

##### SECTION .0100 - GENERAL PROVISIONS

##### .0101 COMPLIANCE WITH BOARD RULES

(e) The Rules of Professional Conduct which follow apply to all services performed in the practice of public accounting including tax and management advisory services except:

- (1) where the wording of the rules indicates otherwise, and
- (2) that a licensee who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein so long as his conduct is in accord with the rules of the organized accounting profession in the country in which he is practicing. However, where a licensee's name is associated with financial statements in such a manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume

that United States practices were followed, he must comply with the requirements of Rules in Section 8G .0201 and .0202 8G .0200.

##### .0112 REMEDIES AND PENALTIES FOR VIOLATIONS

Any person or firm having violated any accountancy law or rule of this board may be subjected for each such violation to any of the following degrees of remedies or penalties, or a combination of such:

##### (3) ~~CONDITIONAL~~ CONDITIONED

UNPUBLISHED REPRIMAND - same as unpublished reprimand, but conditioned upon the CPA's or firm's agreement to meet certain additional requirements such as extra CPE or third party review of work product for a particular period of time.

##### .0113 INVOLVEMENT IN LITIGATION OR COURT ACTION

(a) A Certified Public Accountant shall notify the board within 30 days of any conviction or finding of guilt regarding the adjudication of a crime (excluding noncriminal traffic infractions) in any jurisdiction.

(b) A Certified Public Accountant shall notify the board within 30 days of any litigation, judgment or settlement in a civil suit, the basis of which is grounded upon an allegation of negligence, incompetence, misconduct, fraud or deceit in the firm's or licensee's performance of accounting services.

##### SECTION .0200 - RESPONSIBILITIES TO CLIENTS AND COLLEAGUES

##### .0201 AUDITING STANDARDS

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant auditor unless he has complied with the applicable generally accepted auditing standards.

(b) The Statements on Auditing Standards issued by the American Institute of Certified Public Accountants are hereby adopted by reference as amended through March 31, 1986 December 31, 1986 and shall be considered generally accepted auditing

standards for the purposes of 21 NCAC 8G .0201(a).

(d) Copies of the statements Statements on Auditing Standards may be inspected in the offices of the board, as described in 21 NCAC 8G .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 as a part of the "AICPA Professional Standards" at cost, which approximates fifteen twenty-four dollars ~~(\$15.00)~~ (\$24.00) in paperback form or in looseleaf subscription form at one hundred seventy dollars (\$170.00).

#### .0202 ACCOUNTING PRINCIPLES

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless he can demonstrate that due to unusual circumstances the financial ~~financial~~ statements would otherwise have been misleading.

(c) The Statements of Financial Accounting Standards, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the Financial Accounting Standards Board, are hereby adopted by reference as amended through March 31, ~~1986~~ December 31, 1986 and shall be considered generally accepted accounting principles for the purposes of 21 NCAC 8G .0202(a).

(d) Copies of the Statements of Financial Accounting Standards may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the Financial Accounting Standards Board, High Ridge Park, Post Office Box 3821, Stamford, Connecticut 06905-0821 as part of the "AICPA Professional Standards" at cost, which approximates twenty-five dollars (\$25.00) in paperback form and two hundred thirty-five dollars (\$235.00) in looseleaf subscription form.

#### .0203 FORECASTS

(a) A person admitted to

practice public accounting certified public accountant in North Carolina shall not permit his name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that he vouches for the achievability of the forecast.

(b) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as a certified public accountant unless he has complied with the standards for accountants' services on prospective financial information.

(c) The Statement ~~Statements~~ on Standards for Accountants' Services on Prospective Financial Information issued by the American Institute of Certified Public Accountants is ~~are~~ adopted by reference as amended through December 31, 1986 and shall be considered as the approved standard standards for services on prospective financial information for the purposes of 21 NCAC 8G .0203(b).

(d) Departures from such statements must be justified by those who do not follow them.

(e) Copies of the Statement on Standards for Accountants' Services on Prospective Financial Information may be inspected in the offices of the board as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 as part of the "AICPA Professional Standards" at cost, which approximates twenty-four dollars (\$24.00) in paperback form or one hundred seventy dollars (\$170.00) in looseleaf subscription form.

#### .0208 ACCOUNTING AND REVIEW SERVICES STANDARDS

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as a certified public accountant unless he has complied with standards for accounting and review services.

(b) The Statements on Standards for Accounting and Review Services issued by the American Institute of Certified

Public Accountants are hereby adopted by reference as amended through March 31, 1986 December 31, 1986 and shall be considered as the approved standards for accounting and review services for the purposes of 21 NCAC 8G .0208(a).

(d) Copies of the statements Statements on Standards for Accounting and Review Services may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 as part of the "AICPA Professional Standards" at cost, which approximates five twenty-four dollars ~~(\$5.00)~~ (\$24.00) in paperback form or one hundred seventy dollars (\$170.00) in looseleaf subscription form.

#### .0209 MANAGEMENT ADVISORY SERVICES STANDARDS

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with consultations or engagements in such a manner as to imply that he is acting as a certified public accountant unless he has complied with standards for management advisory services.

(b) The Statements on Standards for Management Advisory Services issued by the American Institute of Certified Public Accountants are hereby adopted by reference as amended through March 31, 1986 December 31, 1986 and shall be considered as the approved standards for management advisory services for the purposes of 21 NCAC 8G .0209(a).

(d) Copies of the statements Statements on Standards for Management Advisory Services may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 at cost, which approximates five six dollars ~~(\$5.00)~~ (\$6.00).

#### .0210 RESPONSIBILITIES IN TAX PRACTICE

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with

tax engagements in such a manner as to imply that he is acting as a certified public accountant unless he has complied with standards for tax services.

(b) The Statements on Responsibilities in Tax Practice are issued by the American Institute of Certified Public Accountants are hereby adopted by reference as amended through March 31, 1986 December 31, 1986 and shall be considered as the approved standards for tax services for the purposes of 21 NCAC 8G .0210(a).

(d) Copies of the statements Statements on Responsibilities in Tax Practice may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 as part of the "AICPA Professional Standards" at cost, which approximates six twenty-four dollars ~~(\$6.00)~~ (\$24.00) in paperback form or one hundred seventy dollars (\$170.00) in looseleaf subscription form.

#### .0211 GOVERNMENTAL ACCOUNTING STANDARDS

(a) A person admitted to practice public accounting certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as a certified public accountant unless he has complied with standards for governmental accounting.

(b) The statements on accounting Statements on Governmental Accounting and Financial Reporting Standards issued by the Governmental Accounting Standards Board are hereby adopted by reference as amended through March 31, 1986 December 31, 1986 and shall be considered as the approved standards for governmental accounting for the purposes of 21 NCAC 8G .0211(a).

(d) Copies of the statements on governmental accounting Statements on Governmental Accounting and Financial Reporting Standards, including technical bulletins and interpretations, may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the Governmental Accounting Standards Board, High Ridge Park, Post Office Box 3827

9125, Dept. 285, Stamford, CT 06905-0824 06925, at cost, which approximates forty-seven dollars and fifty cents (\$47.50). In addition to the basic set, an updating subscription service is available for about forty-four dollars (\$44.00) annually.

#### SECTION .0400 - CONTINUING PROFESSIONAL EDUCATION

##### .0401 CONTINUING PROFESSIONAL EDUCATION

(c) Certificate holders in active status must complete 40 hours of continuing professional education by December 31 of the year preceding the July 1 renewal date, except as follows:

(4) Persons having initial certificate applications approved by the board in October-December would have to complete 10 CPE hours during the same calendar year.

(d) When an individual completes more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year. No person may carry forward CPE hours completed prior to the date of certificate approval. However, Any CPE hours completed during the calendar year in which the certificate is approved by the board may be used for that year's requirement.

#### SUBCHAPTER 8H - RECIPROCITY

##### .0001 RECIPROCAL CERTIFICATES

(c) If an applicant for a reciprocal certificate does not meet all of the current requirements imposed on an applicant for original certificate, then the board will consider the following requirements to be substantially equivalent to the requirements established by G.S. 93-12 if all are met.

(1) The applicant has the unrestricted privilege to use the Certified Public Accountant title and to practice public accountancy in any state or territory of the United States, or the District of Columbia.

(2) The applicant has had four years of experience in the practice of public accountancy after passing the Uniform CPA Examination and within ten years immediately preceding the

filing date of his application.

(3) The applicant shall have received a score of at least 75 on each part of the Uniform CPA Examination.

(4) If the applicant received the CPA certificate referred to in (1) of this Rule, more than four years prior to the filing date of his application, then the applicant shall provide evidence of completion of at least 80 hours of continuing professional education, in courses meeting the requirements of 21 NCAC 8G .0404, during the two years preceding the filing date of his application.

##### .0003 LICENSES FOR TEMPORARY PRACTICE

(a) An out-of-state certificate holder desiring to perform engagements within this state must perform the following:

(1) apply to the board for temporary license for all partners or principals of the firm and for all other certified public accountants that will be engaged thereon;

(2) furnish to the board affidavits an affidavit signed by the secretary an official of the board which issued their the certified public accountant certificates certificate, showing the numbers number of the certificates certificate and that the applicants are applicant is in good standing;

(3) furnish the board with a statement that the work of the engagements will be done by or in charge of a certified public accountant; and

(4) pay an initial or renewal fee to be set by the board annually not to exceed seventy-five dollars (\$75.00) for each fiscal year or fraction thereof for each applicant.

#### SUBCHAPTER 8I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

##### .0005 REVOCATION OF CERTIFICATES

(a) When a certificate is revoked, the certificate holder shall return the certificate to the board office within five days of receipt of notice of revocation.

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATES

(a) The board shall require the renewal of all certificates of qualification annually on the first day of July. The charge for such renewal shall be set annually by the board not to exceed fifty dollars (\$50.00).

(b) The board shall provide renewal cards only upon request of certificate holders.

(c) A certificate shall be forfeited, pursuant to G.S. 93-12(5), for failure to:

(1) pay this the renewal fee  
, or

(2) submit a properly  
completed certificate  
renewal application form, or

(3) submit a properly  
completed continuing  
professional education  
report, as required by 21  
NCAC 8G .0401, .0405, and  
.0406;

within 30 days after demand for such renewal fee shall have been made by the board via first-class mail to the last mailing address on file.  
Certificates revoked for non-payment of renewal fees may be reinstated in the discretion of the board upon payment of a fee not exceeding seventy five dollars (\$75.00)-

(d) Certificates forfeited for failure to renew may be reinstated within twelve months in the discretion of the board upon payment of a fee not exceeding seventy-five dollars (\$75.00) and compliance with the CPE requirements stated in 21 NCAC 8G .0407. Certificates of moral character will not be required unless specifically requested by the board.

(e) When a certificate is forfeited for failure to pay the renewal fee, the certificate holder shall return the certificate to the board office within five days of receipt of notice of forfeiture, or submit an affidavit, on a form supplied by the board, that the certificate has been destroyed, or has been lost and will be returned to the board if found.

SUBCHAPTER 8K - PROFESSIONAL CORPORATIONS

SECTION .0200 - PRACTICE PROCEDURES OF PROFESSIONAL CORPORATIONS

.0201 CORPORATE NAMES

The corporate name of a professional corporation registered under these rules shall include only the names of one or more of the present or former shareholders or of partners associated with a predecessor accounting firm and shall contain the wording "corporation," "incorporated," or "professional association," or an abbreviation of either of the foregoing, "Corp.," "Inc.," "ltd.," "Co.," "P.C.," or "P.A.". The use of "CPA" or "Certified Public Accountant(s)" in the corporate name is encouraged, but not required.

TITLE 24 - INDEPENDENT AGENCIES

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Housing Finance Agency intends to amend regulations cited as 24 NCAC 1D .0102 and .0103; 24 NCAC 1H .0103(a)(1); 24 NCAC 1J .0101 through .0107; .0201 through .0203.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S.  
122A-2; 122A-3; 122A-5;  
122A-5.1; 122A-5.2; 122A-5.4;  
122A-5.5; 122A-8.

The public hearing will be conducted at 10:00 a.m. on February 16, 1987 in the Board Room, N.C. Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, NC 27607.

Comment Procedures: Written comments concerning these amendments must be submitted by February 14, 1987 to the Program Director, N.C. Housing Finance Agency, P.O. Box 28066, Raleigh, North Carolina 27611. Oral comments may be presented at the hearing.

CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

SUBCHAPTER 1D - SINGLE FAMILY MORTGAGE PURCHASE PROGRAM

SECTION .0100 GENERAL INFORMATION

.0102 ELIGIBLE PERSONS AND FAMILIES

(a) For loans purchased with the proceeds of all bonds other than tax exempt bonds issued after January 1, 1987:

(a) (1) The agency hereby finds and declares that income eligible persons and

families of lower income, within the meaning of the act, are deemed to be those persons and families who satisfy the following criteria: insufficient total income, when size of family is considered, to obtain on the normal housing market without subsidy, from available housing supply in a given geographical area of residence in North Carolina, housing found to be decent, safe and sanitary. The agency has carefully considered all the factors which the General Assembly has specified in the statutory definition of "persons and families of lower income." A purpose of the act is to foster the new construction and substantial rehabilitation of residential housing in the state for persons and families of lower income by assisting in the permanent financing of such housing and that the income limits used by the agency in ascertaining who are "persons and families of lower income" must reflect, among other things, the costs of such newly constructed and substantially rehabilitated housing. The General Assembly intended, by means of the act, to assist not only those persons and families eligible for federal housing assistance predicated on a lower income basis, but also those persons and families whose incomes are too high to qualify them for such federal assistance but are to low to enable them to obtain, without governmental assistance, a mortgage loan to finance the purchase of a decent, safe and sanitary home. The agency can best effectuate the purposes of the act by establishing income limits for income eligible persons and families for specific areas of the state which represent the agency's determination of the maximum income level which persons and families in such area may have in order to qualify for assistance under the act. lower income Income eligibility is defined as a function of median income by area, construction cost, and mortgage loan criteria.

Each factor is applied as follows to achieve an equitable result:

(1) (A) The agency used 90 150 percent of median income.

(2) (B) Housing construction costs were determined for a prototype of a modest house in various areas of the state. The Marshall Swift Handbook was used to establish the base construction cost. Finally, minimum lot costs in rural and urban areas were added to the construction cost determinations to produce a finished housing cost for urban areas and for rural areas.

(3) (C) Mortgage lending industry underwriting standards which establish the amount of loan for which a borrower may qualify will be used by the agency. The agency assumes that the borrower would seek 100 percent financing at the FHA/VA maximum rate on a 30 year amortization and that the borrower would be restricted to using 28 percent of his gross monthly income to make the monthly mortgage payment which would include principal interest, taxes and insurance.

(4) (D) Composite figures for median income and for housing cost and mortgage loan underwriting were calculated upon the following premises:

(A) (i) The median income factor relates to eligibility for other housing predicated upon lower income basis.

(B) (ii) The house cost/underwriting figure establishes minimum financial eligibility in the normal housing market.

the combination of the two figures at a 50:50 ratio establishes the maximum income limits for the agency.

(b) (2) The agency has, in accordance with the act, considered the effect of family size on the sufficiency of income for housing needs and determined that the income limits computed in accordance with this Section must be increased by eight hundred

dollars (\$800.00) a year for the fifth family member and for each additional family member thereafter in a large lower income family in order to reflect the additional costs of providing housing for large families, and that the income limits for one person households shall be three-fourths of such limits, except when two or more persons in a non-dependent relationship are jointly purchasing a home, the income of any one person in this relationship cannot exceed the one-person household limit established by the agency, nor can the combined incomes of these persons exceed the income limits for families established by the agency.

(3) An applicant's income will be calculated by including all income in whatever form and from whatever source derived, including the following: compensation for services, including fees, commissions and similar items; gross income derived from business; gains derived from dealings in property; interest; rents royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income in respect of a decedent; income from an interest in an estate or trust; payments made by or on behalf of an employer by reason of death of an employee to the widow or heirs of the employee; recovery of bad debts; amounts received as reimbursement for losses; prizes and awards; amounts received or made available from individual retirement accounts, annuities and retirement bonds. In addition, the calculation of an applicant's income for this purpose will be increased by an amount equal to 10 percent of the value of all the applicant's non-income producing tangible assets, excepting personal property and including real property, securities and stocks.

(b) For loans purchased with

the proceeds of tax exempt bonds issued after January 1, 1987 income eligible persons and families is defined by the agency to be those persons and families with incomes not exceeding the income requirements for mortgage revenue bonds established in Section 143(f) of the Internal Revenue Code 1986.

(1) The sources used in calculating an applicant's income will be determined according to the rules established by the Internal Revenue Service in Revenue Ruling 86-124 until final regulations are issued by the Internal Revenue Service, at which time those final regulations will be used to determine the services used to calculate an applicant's income.

(b) (c) In no instance will any person or family having net assets exceeding forty thousand dollars (\$40,000) be considered eligible for assistance by the agency, except that for persons between the ages of 62 and 64, the net assets limit shall be fifty thousand dollars (\$50,000), for persons 65 years of age and over, the net assets limit shall be sixty thousand dollars (\$60,000), and for handicapped persons requiring a constant attendant the net assets limit shall be seventy five thousand dollars (\$75,000). For the purposes of this Section, "net assets" shall mean the total assets of the borrower excluding household goods, in the Home Improvement Loan Program, the structure to be improved and its site, any debts against the borrower and excluding also, any assets of a borrower determined by the executive director to be appropriate for exclusion, including, without limitation, assets which in the determination of the executive director the borrower is dependent upon for a livelihood. Any such determination that assets are appropriate for exclusion shall be evidenced by a certificate signed by the executive director and filed with the secretary of the agency.

(d) The agency deems that persons and families with annual incomes not in excess of the income limits established by application of the above formula definitions and with net assets not more than those set forth in this Rule, are persons and

families which require such assistance as is made available by the act and such persons and families are hereby deemed, therefore, to be persons and families of lower income eligible to occupy residential housing financed by means of such assistance.

.0103 PERSONS AND FAMILIES OF  
MODERATE INCOME  
(REPEALED)

SUBCHAPTER 1H - MULTI-FAMILY  
MORTGAGE PURCHASE PROGRAM

SECTION .0100 - GENERAL  
INFORMATION

.0103 PERSONS AND FAMILIES OF  
MODERATE INCOME

(a) The agency hereby finds and declares that persons and families of moderate income, within the meaning of the Act, are deemed to be those persons and families who satisfy the following criteria: insufficient total income, when size of family is considered, to obtain on the normal housing market from available housing supply in a given geographical area of residence in North Carolina, housing found to be decent, safe and sanitary without undue financial hardship. The agency has carefully considered all the factors which the General Assembly has specified in the statutory definition of "persons and families of moderate income." A purpose of the Act is to foster the new construction and substantial rehabilitation of residential housing in the state of persons and families of moderate income by assisting in the permanent financing of such housing and that the income limits used by the agency in ascertaining who are "persons and families of moderate income" must reflect, amount other things, the cost of such newly constructed and substantially rehabilitated housing. The General Assembly intended, by means of the Act, to assist not only those persons and families eligible for federal housing assistance, predicated on a lower income basis, and those persons and families whose incomes are too high to qualify them for such federal assistance but are too low to enable them to obtain, without governmental assistance, a mortgage loan to finance the purchase of a decent, safe and sanitary home, but also those

who could not acquire such housing without undue financial hardship. The agency can best effectuate the purpose of the Act by establishing income limits for specific areas of the state which represent the agency's determination of the maximum income level which persons and families in such areas may have in order to qualify for assistance under this median income by area, construction costs, and mortgage loan underwriting criteria. Each factor is applied as follows to achieve an equitable result:

- (1) The agency will use ~~420~~  
150 percent of median income as published periodically by the Department of Housing and Urban Development.

SUBCHAPTER 1J - HOME IMPROVEMENT  
LOAN PURCHASE PROGRAM

SECTION .0100 - GENERAL  
INFORMATION

.0101 OBJECTIVES

(a) One of the basic objectives of the agency is to finance the making of loans to persons and families of lower and moderate-income to be used to enable such persons and families to rehabilitate existing homes. The agency has established a financing program to achieve these objectives (herein referred to as the "home improvement loan purchase program").

(b) The agency financing activity under the home improvement loan purchase program is under the home improvement loan note purchase agreement (hereinafter referred to as "note purchase agreement").

(c) (b) The agency, recognizing that the need for assistance to home owners (as contemplated by the act) is very great and further recognizing that the agency funds available to meet that need are small in comparison to that need, will use its best efforts to spread its available funds through the state in an equitable manner designed to insure that all areas of the state have a fair opportunity to participate in the program.

(d) (c) As funds for the purchase of home improvement loans become available to the agency, through the sale of agency bonds such funds shall may be made available to North Carolina home improvement loan

lenders. Such lenders upon agency notification of the availability of such funds, may indicate their interest in participating in the home improvement loan ~~note purchase~~ program by execution of a form specified as such by the agency.

#### .0102 INCOME ELIGIBLE PERSONS AND FAMILIES

The provisions of 24 NCAC

~~1B .0102, Persons and Families of Lower Income and 24 NCAC 1B .0103, Persons and Families of Moderate Income, will apply throughout this Subchapter.~~

~~(a) For loans financed with the proceeds of all funds other than tax-exempt bonds issued after January 1, 1987:~~

~~(1) The agency hereby finds and declares that income eligible persons and families within the meaning of the act, are deemed to be those persons and families who satisfy the following criteria: insufficient total income, when size of family is considered, to obtain on the normal housing market without subsidy, from available housing supply in a given geographical area of residence in North Carolina, housing found to be decent, safe and sanitary. The agency has carefully considered all the factors which the General Assembly has specified in the statutory definition of "persons and families of lower income." A purpose of the act is to foster the new construction and substantial rehabilitation of residential housing in the state for persons and families of lower income by assisting in the permanent financing of such housing and that the income limits used by the agency in ascertaining who are "persons and families of lower income" must reflect, among other things, the costs of such newly constructed and substantially rehabilitated housing. The General Assembly intended, by means of the act, to assist not only those persons and families eligible for federal housing assistance predicated on a lower income basis, but also those persons and families whose incomes are too high to qualify them for such federal assistance but are~~

~~too low to enable them to obtain, without governmental assistance, a mortgage loan to finance the purchase of a decent, safe and sanitary home. The agency can best effectuate the purposes of the act by establishing income limits for income eligible persons and families for specific areas of the state which represent the agency's determination of the maximum income level which persons and families in such area may have in order to qualify for assistance under the act. Income eligibility defined as a function of median income by area, construction costs, and mortgage loan criteria. Each factor is applied as follows to achieve an equitable result:~~

~~(A) The agency used 150 percent of median income.~~

~~(B) Housing construction costs were determined for a prototype of a modest house in various areas of the state. The Marshall Swift Handbook was used to establish the base construction costs. Finally, minimum lot costs in rural and urban areas were added to the construction cost determinations to produce a finished housing cost for urban areas and for rural areas.~~

~~(C) Mortgage lending industry underwriting standards which establish the amount of loan for which a borrower may qualify will be used by the agency. The agency assumes that the borrower would seek 100 percent financing at the FHA/VA maximum rate on a 30 year amortization and that the borrower would be restricted to using 28 percent of his gross monthly income to make the monthly mortgage payment which would include principal interest, taxes and insurance.~~

~~(D) Composite figures for median income and for housing costs and mortgage loan underwriting were calculated upon the following premises:~~

~~(i) The median income factor relates to eligibility for other housing predicated upon lower income basis.~~

(ii) The house cost/underwriting figure establishes minimum financial eligibility in the normal housing market.

The combination of the two figures at a 50:50 ratio establishes the maximum income limits for the agency.

(2) The agency has, in accordance with the act, considered the effect of family size on the sufficiency of income for housing needs and determined that the income limits computed in accordance with this Section must be increased by eight hundred dollars (\$800.00) a year for the fifth family member and for each additional family member thereafter in a large lower income family in order to reflect the additional costs of providing housing for large families, and that the income limits for one person households shall be three-fourths of such limits, except when two or more persons in a non-dependent relationship are jointly purchasing a home, the income of any one person in this relationship cannot exceed the one-person household limit established by the agency, nor can the combined incomes of these persons exceed the income limits for families established by the agency.

(b) For loans financed with the proceeds of tax-exempt bonds issued after January 1, 1987 income eligible persons and families is defined by the agency to be those persons and families with income not exceeding the income requirements for mortgage revenue bonds established in Section 143(f) of the Internal Revenue Code of 1986, as amended.

(1) The sources used in calculating an applicants income will be determined according to the rules established by the Internal Revenue Service in Revenue Ruling 86-124 until final regulations are issued by the Internal Revenue Service, at which time those final regulations will be used to determine the sources used to calculate an applicant's income.

(c) In no instance will any

person or family having net assets exceeding forty thousand dollars (\$40,000) be considered eligible for assistance by the agency, except that for persons between the ages of 62 and 64, the net assets limit shall be fifty thousand dollars (\$50,000), for persons 65 years of age and over, the net assets limits shall be sixty thousand dollars (\$60,000), and for handicapped persons requiring a constant attendant the net assets limit shall be seventy five thousand dollars (\$75,000). For the purposes of this Section, "net assets" shall mean the total assets of the borrower determined by the executive director to be appropriate for exclusion, including, without limitation, assets which in the determination of the executive the borrower is dependent upon for a livelihood. Any such determination that assets are appropriate for exclusion shall be evidenced by a certificate signed by the executive director and filed with the secretary of the agency.

(d) The agency deems that persons and families with annual incomes not in excess of the income limits established by application of the above formula definitions and with net assets not more than those set forth in this Rule, are persons and families which require such assistance as is made available by the act and such persons and families are hereby deemed, therefore, to be persons and families of lower income eligible to occupy residential housing financed by means of such assistance.

#### .0103 ELIGIBLE BORROWER

To be eligible for a home improvement loan, under the note purchase agreement segment of this program, each applicant must meet all of the following requirements:

- (1) be a person or family of lower or moderate-income;
- (2) possess at least a one-third an ownership interest in and occupy the property as his or her principal residence; and
- (3) intend to use the home to be rehabilitated for his or her personal or family residence. and

(4) meet all of the requirements of Section 103A of the Internal Revenue Code of 1954, (as amended in 1980).

#### .0104 ELIGIBLE PROPERTY

In order to be the subject of a loan made to secure a home improvement loan under this program, a home must meet the following requirements:

- (1) be located in the State of North Carolina;
- (2) be improvements eligible for mortgage insurance under HUD, FHA Title I Requirements under Section 1703, Title 12, United States Code, or private mortgage insurance;
- (3) be a first or second lien on the property, consistent with North Carolina law, and conform with the standards prescribed by the agency in its note purchase agreement and other forms;
- (4) (2) be improved to comply with any applicable state, country or municipal health, building, fire or other local property rehabilitation standards;
- (5) (3) be a year-round residence containing no more than four dwelling units; and
- (6) (4) be a home attached to a permanent foundation, and
- (7) meet all the requirements of Section 103A of the Internal Revenue Code, (as amended in 1980).

#### .0105 ELIGIBLE LOAN

(a) The loan to be originated or purchased by the agency under the note purchase agreement segment of the program shall be executed on a form approved by the agency.

(b) Loans to be purchased by the agency shall in all respects comply with Section 103A of the Internal Revenue Code of 1954 (as amended in 1980).

#### .0106 ELIGIBLE LENDER (REPEALED)

.0107 COMPLIANCE WITH TAX ACT  
Mortgages to be purchased by the agency, with tax-exempt bond proceeds, shall in all respects comply with Section 103A of the Internal Revenue Code of 1954, as amended.

#### SECTION .0200 - CONTRACTS AND FORMS

##### .0201 ELIGIBLE LENDER CONTRACT FORMS

(a) For loans purchased by the agency eligible lenders shall establish their contractual relationship with the agency by entering into the North Carolina Housing Finance Agency "Home Improvement Loan Note Purchase Agreement" form contract which

is described in greater detail in the Home Improvement Loan Program procedural manual.

(b) Under the "Home Improvement Loan Note Purchase Agreement" form contract the lender and agency agree to the following:

- (1) the agency agrees to purchase from the lender and the lender agrees to sell a given amount of home improvement loans;
- (2) each loan shall should generally be a first or second lien on lands and improvements constituting occupied, single family, or multifamily units consisting of no more than four units;
- (3) lender's interest in the home improvement loan and Deed of Trust shall be assigned to the agency at purchase;
- (4) appraisal may be performed on each loan exceeding five thousand dollars (\$5,000);
- (5) the loan term shall should generally not exceed 15 years, although the agency may, at its discretion, approve longer loan terms if it deems necessary;
- (6) monthly payment of principal and interest and level payment amortization is required;
- (7) mortgage insurance or guaranty is required as a condition of purchase of the home improvement loan;
- (8) lender must comply with all applicable state, local and federal laws and regulations;
- (9) the agency shall not be obligated to purchase any home improvement loans under any such such agreement unless the agency has approved the making of such home improvement loans in accordance with the act;
- (10) misrepresentation or breach of Warranty by the lender as to a home improvement loan shall entitle the agency to require the lender to repurchase such home improvement loan; and
- (11) all obligations under contract that are to be financed with bond proceeds are subject to the successful sale and delivery by the agency of its bonds and receipt of the bond proceeds.

##### .0202 SERVICING AGREEMENT

The agency may directly service loans originated or purchased by the agency or sign an agreement with a master servicer. There shall be a The Master Servicer to shall service all home improvement loans purchased by for the agency pursuant to a "North Carolina Housing Finance Agency Servicing Agreement" to which shall be entered into by the agency and Master Servicer. The agency and the Master Servicer agree to the following:

- (1) Servicer shall provide that improvements are insured and will diligently ascertain loss or damage;
- (2) Servicer shall accept monthly payments, tax, escrow payments and shall report to the agency on all

home improvement loans being serviced;

- (3) Servicer shall take all appropriate actions in case of default; and, if instituted, protect the premises pending foreclosure;
- (4) Servicer shall agree to comply with all applicable laws and regulations and shall not be authorized to vary any terms of the note or Deed of Trust purchased by the agency; and
- (5) The servicing agreement is not assignable without agency consent.

.0203 FORMS ACCOMPANY HOME  
IMPROVEMENT LOANS  
APPROVED BY AGENCY  
(REPEALED)

## FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

### TITLE 17 - DEPARTMENT OF REVENUE

#### CHAPTER 6 - INDIVIDUAL INCOME TAX

##### SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

#### SECTION .3000 - CONTRIBUTIONS

##### .3802 - DEDUCTIONS

(i) There must be a business connection before a payee or endorser of a note may claim a loss in case of default. The debt must be legal and must exist in fact. The liability of the individual claiming the loss must be one that can be enforced in the courts. In the case of a payee of a note, the note must have been in connection with a transaction from which gain was payee of the note, the note is usually considered to have been issued for business purposes. In the case of a loss resulting from an endorser having to pay the obligation, the endorser must have stood to gain either directly or indirectly from the transaction. The endorsement for a member of the endorser's accommodation is not considered a transaction entered into for profit. On the other hand, an endorsement in an attempt to protect one's investment, such as an endorsement of a corporation note by a stockholder of the corporation, might be construed to have a business connection, and a loss resulting from such endorsement is usually deductible. Even the endorsement of an employee's

note in an effort to retain the services of the employee can in some cases be construed to have a business connection for the purpose of determining whether a loss from the endorsement is deductible. In all cases in which a loss for an endorsement of a note is claimed the endorser must be able to prove a definite business connection.

The time when a loss from a note or note endorsement may be claimed as a deduction is determined by whether the individual is on a cash or an accrual basis. A cash basis taxpayer may claim an allowable loss for a note endorsement at the time payment is made by him and not at an earlier date when it is determined that there will be a loss. If a cash basis taxpayer, who has endorsed a note, gives his own note in payment of his liability as an endorser, he cannot deduct the loss until he pays his note. In the case of an endorsement of a note by an accrual basis taxpayer, the loss may be claimed at the time the amount of the loss may be determined with reasonable accuracy.

The payee of a note on which the maker has defaulted may claim a loss at the time the amount of the loss may be determined with reasonable accuracy, provided the amount claimed has previously been included in income or provided the transaction upon which the note was based was in connection with a trade or business or in connection with a business transaction from which gain was expected.

Effective for tax years beginning after 1986, the reserve method for computing and deducting business bad debts is not allowable. Only those business bad debts which became worthless during the taxable year are deductible. In determining the worthlessness of debts, and the amount to be included in income because of the balance in any reserve for bad debts as of January 1, 1987, federal rules and regulations in effect for the taxable year will be followed to the extent that they are not contrary to the context and intent of state laws.

History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-147(7); 105-147(9)a; 105-147(10); 105-147(24); 105-147(28); 105-148(1); 105-148(2);

105-148(8); 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
August 1, 1986; June 1, 1982;  
April 12, 1981.

### .3803 OTHER ITEMS

(b) When a taxpayer acquires a bond at a price which is less than the redemption value, it is acquired at a discount; however, no gain is immediately reportable. If the bond is sold prior to maturity or redeemed at maturity for an amount in excess of its basis, the taxpayer has a reportable gain. If the bond is sold prior to maturity for a price which is less than its basis, the taxpayer has a deductible loss. The taxpayer reports his gain or deducts his loss regardless of whether interest on the bond is taxable or exempt.

A U. S. Government Series E Savings Bond purchased at a given price and redeemable at a higher price based on a schedule printed on the bond is not considered a bond purchased at a discount. For a bond of this type, the difference between the purchase price and the redemption value is interest which is exempt from state income tax.

For obligations acquired on or after October 22, 1986, a purchaser of stripped bonds or coupons is treated as having acquired an original issue discount bond. The amount determined as original issue discount is not taxable but must be taken into account in determining the taxpayer's basis in the obligation. In determining the amount of original issue discount and the adjustment to the basis, federal rules and regulations in effect during the income year will be followed which are not deemed to be contrary to the context and intent of state law.

(n) Federal rules and regulations in effect during the income year will be followed in determining the extent to which business or nonbusiness deductions are not allowable because of being allocable to tax exempt income.

(p) An individual may elect to have his or her income tax refund applied to estimated income tax for the following year. For example, an individual due a refund on his 1985 income tax return may have all or any portion of the refund applied to his estimated tax for 1986. The individual may not

however, file a 1985 return in 1987 and request the refund be applied to his 1987 estimated tax since the refund can only be applied to the tax year which follows the year for which the request for the refund is made.

If an individual due an income tax refund makes a valid election under G.S. 105-269.4 for the refund to be applied to estimated income tax for the following year and the elected amount is credited as a payment of estimated income tax, it loses its character as an overpayment for the year in which it arose. If the election is valid, the taxpayer may not revoke the election in order to have the amount refunded or applied in any other manner, such as an offset against any subsequently determined tax liability.

History Note: Statutory  
G.S. 8-45.3; 105-142(a);  
105-144(a); 105-144.3;  
105-147(1)h; 105-147(9)a;  
105-147(17); 105-147(19);  
105-148(1); 105-159.1;  
105-163.16(c); 105-163.16(e);  
105-251; 105-262; 147-77;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
August 1, 1986; May 1, 1984;  
June 1, 1982.

## SUBCHAPTER 7B - STATE SALES AND USE TAX

### SECTION .1100 - SALES OF BULK TOBACCO BARNS: FARM MACHINES AND MACHINERY

#### .1123 BUILDING MATERIALS SOLD TO LIVESTOCK AND POULTRY FARMERS

Effective August 1, 1986,  
sales to commercial livestock  
and poultry farmers of materials  
to be used exclusively in the  
construction, repair or  
improvement of any enclosure or  
structure specifically designed,  
constructed, and used for  
commercial purposes for housing,  
raising, or feeding livestock  
and poultry or for housing  
equipment necessary for these  
activities, including work space  
used solely for these commercial  
activities, are exempt from  
sales and use taxes. Likewise,  
sales of materials for the above  
described uses to contractors  
performing contracts with  
commercial livestock and poultry  
farmers and subcontractors  
performing contracts with  
general contractors who have  
contracts with commercial  
livestock and poultry farmers

shall be exempt. The exemption from tax extends only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures. For the purpose of this Rule, the words "livestock and poultry" include cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes and the word "commercial" shall mean "held or produced for income or profit." Commercial farmers, contractors and subcontractors may obtain Commercial Poultry and Livestock Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-164.6; 105-262;  
Eff. February 1, 1987.

SECTION .1600 - SALES TO  
OR BY HOSPITALS: EDUCATIONAL:  
CHARITABLE OR RELIGIOUS  
INSTITUTIONS: ETC., AND  
REFUNDS THERETO

.1602 REFUNDS TO INSTITUTIONS:  
ETC.

(d) All refund claims must be substantiated by proper documentary proof and only the taxes actually paid by the claimant during the period for which the claim for refund is filed may be included in the claim. Any local one percent, one and one-half percent or two percent sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's tax has been paid, a breakdown must be attached to the claim showing the amount of each county's one percent, one and one-half percent and two percent local tax separately.

(f) To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor,

the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local one percent, one and one-half percent or two percent sales or use taxes included in the contractor's statements must be shown separately from the state sales or use taxes.

History Note: Statutory  
Authority G. S. 105-164.14;  
105-262; 105-264;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
May 1, 1985; January 3, 1984;  
September 30, 1977.

SECTION .1700 - SALES TO OR BY  
THE STATE: COUNTIES: CITIES:  
AND OTHER POLITICAL SUBDIVISIONS

.1701 GOVERNMENTAL SALES AND  
PURCHASES

(a) Sales of tangible personal property not specifically exempt by statute to the State of North Carolina, counties, cities, towns, and political subdivisions or any agencies thereof for the purpose of use or consumption are subject to the sales or use tax, except, effective August 1, 1986, sales of tangible personal property, intrastate telephone service, electricity and piped natural gas directly to the Department of Transportation are exempt from sales and use taxes. However, the exemption does not extend to sales of tangible personal property to contractors for use in the performance of contracts with the Department of Transportation nor to sales of tangible personal property to other agencies, local governments or employees of the Department of Transportation. Sales of building materials,

supplies, fixtures, and equipment to contractors for use in the performance of contracts with the federal government or any above referred to governmental units or agencies are also subject to the sales or use tax.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-164.6; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
January 1, 1982.

.1702 REFUNDS TO COUNTIES:  
CITIES; ETC

(b) All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the claimant during the fiscal year covered by the refund claim may be included in the claim. Any local one percent, one and one-half percent or two percent sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a breakdown must be attached to the claim for refund showing the amount of each county's one percent, one and one-half percent and two percent local tax separately.

(d) To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the state and local sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local one percent, one and one-half percent or two percent sales or use taxes included in the contractor's statements must be

shown separately from the state sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the governmental entities as defined by G.S. 105-164.14(c). Examples of property on which sales or use tax has been paid by the contractor and which should not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts and equipment rentals, blueprints, etc.

History Note: Statutory  
Authority G.S. 105-164.14;  
105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
August 1, 1986; May 1, 1985;  
March 1, 1985.

SECTION .3600 - FUNERAL EXPENSES

.3601 IN GENERAL

(a) Except as otherwise provided in Paragraph (b) of this Rule, all funeral expenses, including gross receipts from tangible personal property furnished or services rendered by funeral directors, morticians or undertakers are subject to the three percent sales or use tax. Where coffins, caskets, vaults and memorial stones or monuments are provided by the same funeral home and a separate charge is paid for services, the provisions of this Rule shall apply to the total for both. For additional information regarding the sale and installation of memorial stones and monuments, see 17 NCAC 7B .3400.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-164.6; 105-164.13;  
105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
February 1, 1986;  
January 3, 1984.

SECTION .4300 - REFUNDS TO  
INTERSTATE CARRIERS

.4301 IN GENERAL

(a) Any person engaged in

transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation and who is required by either such federal agency to keep records according to its standard classification of accounting or, in the case of a small certified air carrier, is required by the United States Department of Transportation to make reports of financial and operating statistics, may secure from the Secretary of Revenue a refund of the North Carolina state and county sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this state for motor vehicles, railroad cars, locomotives and airplanes operated by such person. Class I, II and III common and contract carriers are under the jurisdiction of the Interstate Commerce Commission; however, Class III common and contract carriers are not required to keep records according to the Interstate Commerce Commission's standard classification of accounting and are not entitled to a refund under the provisions of this Rule. Persons not meeting all of the requirements in this Rule are not entitled to a refund under the provision of this Rule.

History Note: Statutory  
Authority G.S. 105-164.14;  
105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
March 1, 1984; January 3, 1984.

#### SECTION .4400 - LEASE OR RENTAL

##### .4410 ASSIGNMENT OF LEASE

(a) Where upon a recourse basis a lessor assigns a lease contract and gives a security interest in the leased property which is designated as such but retains title to such property, the lessor remains liable for collecting and remitting tax on the lease receipts notwithstanding that the lessor does not receive rental payments directly from the lessee. However, if the assignee enforces the security agreement and acquires title to the leased property, he becomes the lessor of such property and liable for collecting and remitting tax on the receipts from its lease or rental.

(b) Where for security purposes and upon a recourse basis, a lessor assigns a lease contract together with its right, title and interest in the leased property, but the property will revert to the lessor at the expiration of the lease, the lessor remains liable for collecting and remitting tax on the lease receipts notwithstanding that the lessor does not receive rental payments directly from the lessee.

(c) Where upon a nonrecourse basis a lessor assigns a lease contract and without reservation of any interest, transfers all its right, title and interest in the leased property, the lessor is liable for remitting the tax due on the entire balance of the lease contract at the time of assignment including any amount withheld as a financing reserve.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987.

#### SECTION .5300 - CERTIFICATE OF AUTHORITY: BOND REQUIREMENTS

##### .5301 IN GENERAL

(d) Certificate holders who do not furnish copies of the certificate of authority to their vendors must pay tax due on their purchases. Vendors who do not have copies of the certificate of authority as part of their permanent files are liable for and shall charge the applicable tax on their sales to certificate holders. The department's field auditors will hold all vendors liable for applicable tax on sales to certificate holders if such vendors do not have the necessary copies of the certificate of authority. Certificate holders must keep evidence of vendors to whom certificates are issued as a part of their permanent files so that the department's auditors can correctly determine the vendors' and vendees' liability for applicable sales or use taxes. It is not necessary that the certificate of authority be furnished to vendors when the vendees are purchasing tangible personal property which is exempt from tax under the provisions of G.S. 105-164.13.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-164.6; 105-262;  
Eff. February 1, 1976;

Amended Eff. February 1, 1987;  
January 1, 1982.

SECTION .5400 - FORMS USED  
FOR SALES AND USE  
TAX PURPOSES

.5445 COMMERCIAL LIVESTOCK  
AND POULTRY FARMER'S  
CERTIFICATE  
FORM: E-599S

The Commercial Livestock and Poultry Farmers' Certification Form, E-599S, is to be completed by commercial livestock and poultry farmers, contractors for commercial livestock or poultry farmers, or by subcontractors performing work encompassed in a contract for a commercial livestock or poultry farmer and accepted by any vendor as the authority for exempting from sales and use tax sales of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically designed, constructed and used or to be used for commercial purposes for housing, raising, or feeding livestock or poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities.

History Note: Statutory  
Authority G.S. 105-164.4;  
105-262;  
Eff. February 1, 1987.

SUBCHAPTER 7C - LOCAL  
GOVERNMENT: MECKLENBURG  
COUNTY AND SUPPLEMENTAL  
LOCAL GOVERNMENT SALES  
AND USE TAX ACTS

SECTION .0200 - MECKLENBURG  
COUNTY SALES AND  
USE TAX ACT

.0204 MAXIMUM TAX

(a) Effective November 1, 1981, the Mecklenburg County Sales and Use Tax Act was amended to delete the ten dollars (\$10.00) maximum tax. The one percent Mecklenburg County sales or use tax without any maximum tax applicable thereto will be due on all taxable sales or purchases of tangible personal property subject to the three percent state sales or use tax on or after November 1, 1981, irrespective of the date the order is placed. The one percent Mecklenburg County sales or use tax with a maximum Mecklenburg County Tax of ten dollars (\$10.00) per sale will continue to be applicable with

respect to sales to contractors of any building materials, supplies, fixtures and equipment subject to the three percent state sales or use tax which will annex to or become a part of a building or structure being erected or constructed under a lump sum or unit price contract entered into or awarded before November 1, 1981, or any lump sum or unit price contract awarded pursuant to a bid made before November 1, 1981.

(b) The lease receipts derived by lessors who have entered into lease agreements with lessees in Mecklenburg County prior to November 1, 1981, to lease for a definite stipulated period of time tangible personal property which is subject to the three percent state sales or use tax will continue to be subject to the one percent Mecklenburg County sales or use tax with a maximum Mecklenburg County tax of ten dollars (\$10.00) applicable for the term of such lease agreements provided the property is delivered to the lessee prior to November 1, 1981. The lease receipts derived by lessors on lease agreements negotiated or renegotiated on or after November 1, 1981, to lease tangible personal property which is subject to the three percent state sales or use tax will be subject to the one percent Mecklenburg County sales or use tax without any maximum tax applicable thereto.

History Note: Statutory  
Authority G.S. 105-262;  
S.L. (1967), Ch. 1096,  
s. 4 and 5;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1987;  
January 1, 1982.

SECTION .0500 - ADDITIONAL  
SUPPLEMENTAL LOCAL GOVERNMENT  
SALES AND USE TAX ACT

.0501 TAX IMPOSED

All counties that levy a one percent local sales and use tax under Article 39 of Chapter 105 or under Chapter 1096 of the 1967 Session Laws and also levy a one-half percent local sales and use tax under Chapter 105 may levy an additional one-half percent local sales and use tax. The adoption, levy, collection, distribution, administration and repeal of these additional taxes shall be in accordance with Article 39 of Chapter 105 and Regulation 17 NCAC 7C .0100, .0200 and .0300, except as

provided by statute. All additional supplemental sales and use taxes shall be collected by the Secretary of Revenue and may not be collected by the taxing county.

History Note: Statutory  
Authority G.S. 105-262;  
105-498; 105-501;  
Eff. February 1, 1987.

#### .0502 DISTRIBUTION OF ADDITIONAL TAXES

The Secretary shall, on a quarterly basis distribute the net proceeds of the one-half percent additional supplemental local sales and use taxes to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary of Revenue by the State Budget Officer. The amount distributed to a taxing county shall then be divided among the taxing county and its municipalities in accordance with the method by which the one percent local government sales and use taxes are distributed. If any taxes levied by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the secretary shall distribute a pro rata share of taxes to that county based upon the number of months the taxes were collected during that quarter.

History Note: Statutory  
Authority G.S. 105-262;  
105-498; 105-501;  
Eff. February 1, 1987.

#### .0503 SALES CONTRACTS

Generally, a sale is not consummated until delivery is made to the purchaser; therefore, in the absence of unusual circumstances, the supplemental local sales or use tax will be due on all taxable sales or purchases of property, including building materials, which is delivered on or after the effective date of the levy irrespective of the date the order is placed. The supplemental local sales and use tax shall be applicable with respect to sales to contractors of any building materials, supplies or equipment which will

be annexed to or become a part of a building or structure being constructed under a lump sum or unit price contract awarded before the effective date of the levy or awarded pursuant to a bid made before the effective date of the levy.

History Note: Statutory  
Authority G.S. 105-262;  
105-498; 105-501;  
Eff. February 1, 1987.

### TITLE 19A - DEPARTMENT OF TRANSPORTATION

#### CHAPTER 2 - DIVISION OF HIGHWAYS

##### SUBCHAPTER 2D - HIGHWAY OPERATIONS

#### SECTION .0900 - REGULATIONS FOR INFORMAL CONSTRUCTION AND REPAIR CONTRACTS

##### .0901 DELEGATION TO SECRETARY

The Secretary of Transportation is delegated authority to let construction or repair contracts by soliciting informal bids pursuant to G.S. 136-28.1(b). The Secretary of Transportation subdelegates this authority to the Purchasing Officer of Department of Transportation's Purchasing Section.

History Note: Statutory  
Authority G.S. 136-28.1;  
136-18(1); 136-44.1;  
136-45; 143-350(f);  
Eff. February 1, 1987.

##### .0902 CONTRACT REQUIREMENTS

Only Sections 109-9 and 109-10 (Final Payment and Documents Required) of Division I of the Standard Specifications for Roads and Structures, and only Subsection .0825 (confidentiality of cost estimates and bidding list) of Section .0800 of 19A NCAC 02D shall be applicable to contracts let pursuant to the informal bidding process, unless they are otherwise specifically made applicable by the contract documents.

History Note: Statutory  
Authority G.S. 136-28.1;  
136-18(1); 136-44.1;  
136-45; 143-350(f);  
Eff. February 1, 1987.

# NORTH CAROLINA ADMINISTRATIVE CODE

## LIST OF RULES AFFECTED

EDITION XI, NO. 3

EFFECTIVE: January 1, 1987

AGENCY		ACTION TAKEN	
<u>ADMINISTRATION</u>			
1	NCAC	3C	Transfer to 1 NCAC 4H Eff. 11-25-86
		5C	Transfer to 1 NCAC 4G Eff. 11-25-86
<u>AGRICULTURE</u>			
2	NCAC	9B .0022	Amended
		9B .0032-.0033	Adopted
		9E .0012	Repealed
		9G .0101	Amended
		9K .0212	Amended
		9L .2001-.2004	Adopted
		48A .0608	Amended
		48A .0610-.0612	Amended
		48A .0901	Amended
<u>CORRECTION</u>			
5	NCAC	2F .2002-.2006	Amended
		2F .2007	Adopted
		4C .1803-.1805	Amended
<u>HUMAN RESOURCES</u>			
10	NCAC	3R .0304-.0307	Amended
		3R .1003	Amended
		3R .1602	Repealed
		3R .1604-.1609	Repealed
		3R .1613-.1618	Adopted
		3R .1702	Repealed
		3R .1704-.1709	Repealed
		3R .1713-.1719	Adopted
		3U .0102	Amended
		3U .0202	Amended
		3U .0204	Amended
		3U .0302-.0303	Amended
		3U .0401-.0402	Amended
		3U .0501	Amended
		3U .0504	Amended
		3U .0505	Adopted
		3U .0703-.0708	Amended
		3U .0903	Amended
		3U .1001	Amended
		3U .1003	Amended
		3U .1201	Amended
		3U .1302	Amended
		3U .1403	Amended
		3U .1701-.1703	Adopted
		3U .1704	Repealed
		3U .1705	Adopted
		3U .1706-.1715	Repealed
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		3U .2101	Adopted
		3U .2201	Adopted
		3U .2204	Adopted
		3U .2316	Adopted
		14B .0101-.0106	Amended
		14B .0201-.0207	Repealed
		14C .0704-.0716	Adopted
		26G .0403	Amended

26G	.0504	Amended
26G	.0511	Amended
26G	.0601-.0602	Amended
26H	.0106	Amended
26H	.0202	Amended
26H	.0204	Amended
26H	.0302-.0304	Amended
26J	.0201-.0206	Adopted
36	.0405	Amended
44C	.1601-.1604	Amended
46C	.0101-.0102	Amended
46C	.0103-.0104	Repealed
46C	.0105	Amended
46C	.0106-.0107	Adopted
47B	.0405	Amended
49C	.0101-.0501	Adopted
 <u>LABOR</u>		
13	NCAC 13 .0101	Amended
 <u>NATURAL RESOURCES AND COMMUNITY DEVELOPMENT</u>		
15	NCAC 10F .0305	Amended
 <u>REVENUE</u>		
17	NCAC 1C .0402	Amended
 <u>VETERINARY MEDICAL BOARD</u>		
21	NCAC 66 .0206	Amended
	66 .0601	Adopted
 <u>EDUCATION</u>		
23	NCAC 2C .0301	Amended
	2C .0305	Adopted
 <u>OFFICE OF ADMINISTRATIVE HEARINGS</u>		
26	NCAC 1 .0002	Adopted
	3 .0011	Amended
	3 .0026	Amended
	3 .0028	Amended

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1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department
8	Elections, State Board of
9	Governor
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control, Department of
15	Natural Resources and Community Development
16	Education, Department of
17	Revenue, Department of
18	Secretary of State
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	Personnel, Department of State
26	Office of Administrative Hearings

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
30	Law Examiners, Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapist, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in
44	Osteopathic Examination and Registration
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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671 - 761 . . . . .	January

AO - Administrative Order  
AG - Attorney General's Opinions  
C - Correction  
E - Errata  
EO - Executive Order  
FDL - Final Decision Letters  
FR - Final Rule  
GS - General Statute  
JO - Judicial Order  
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M - Miscellaneous  
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