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The
**NORTH CAROLINA
REGISTER**

IN THIS ISSUE.....

EXECUTIVE ORDERS

FINAL DECISION LETTERS

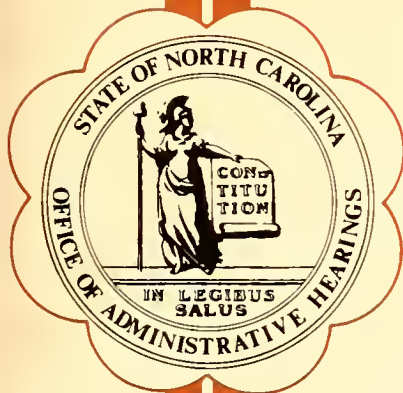
PROPOSED RULES

Housing Finance Agency

Human Resources

NRCD

State Treasurer



ISSUE DATE: APRIL 4, 1988

Volume 3 • Issue 1 • Pages 1-25

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 subscriptions 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 the time and place of the public hearing; 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; a reference to the Statutory Authority for the action 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.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, 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 with the Office of Administrative Hearings for publication in the NCAC.

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 180 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) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC 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
 (March 1988 - March 1989)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
03/15/88	02/24/88	03/02/88	04/14/88	07/01/88
04/04/88	03/11/88	03/18/88	05/04/88	08/01/88
04/15/88	03/25/88	04/01/88	05/15/88	08/01/88
05/02/88	04/11/88	04/18/88	06/01/88	09/01/88
05/16/88	04/27/88	05/03/88	06/15/88	09/01/88
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12/01/88	11/07/88	11/15/88	12/31/88	04/01/89
12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
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02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDER NUMBER 68

NORTH CAROLINA COMMISSION ON THE
SUPERCONDUCTING SUPER COLLIDER

North Carolina's proposal to be the site of the Superconducting Super Collider (SSC) presents an enormous opportunity for the state to solidify its position as a world center of high technology research and development. If North Carolina is chosen as the site of the SSC, the benefits to the state and its people will be substantial. At the same time, any project of this magnitude will have effects on individuals and the surrounding communities. It is the obligation of the state to ensure that the effects of the SSC project--on the people in the area, on the counties and municipalities, and on the environment--are beneficial.

The SSC is a unique public project in many respects. It is the largest scientific instrument in the world and is designed for pure research. If North Carolina is chosen as the SSC site, the state will acquire the land needed for the SSC, then release the land to the federal government. This plan necessarily will involve the local governments in the SSC area. Because of the complexity of the project and the levels of government involved, an ongoing mechanism is needed to ensure that those who implement the SSC project are sensitive to the many governmental and individual rights and prerogatives involved.

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

Section 1. ESTABLISHMENT

The North Carolina Commission on the Superconducting Super Collider is hereby established. The Commission shall consist of not more than fifteen members appointed by the Governor to serve at the pleasure of the Governor. All vacancies shall be filled by the Governor. The SSC Project Director shall serve as the Chairperson. The SSC Project Director shall vote only when necessary to break a tie.

Section 2. MEMBERSHIP

The membership of the Commission shall include but not be limited to representatives from the following groups:

1. The Durham County Manager.
2. The Granville County Manager.
3. The Person County Manager.
4. Two Durham County Commissioners.
5. Two Granville County Commissioners.
6. Two Person County Commissioners.
7. The SSC Project Director.

Section 3. FUNCTIONS

The North Carolina Commission on the Superconducting Super Collider shall have the following duties:

1. To serve as a coordinating mechanism between the three counties involved and the state in matters relating to the SSC project.
2. To recommend locations to the state and federal governments for the SSC Project which will displace the fewest property owners.
3. To recommend to the state the location of roads and utilities necessary for the project.
4. To present the interests of the property owners potentially affected by the SSC Project to ensure that each receives fair compensation for SSC property acquisitions.
5. To study the effects of SSC-related development on local government entities and recommend amounts of state financial aid to lessen the impact of the SSC and insure that local governments are able to meet the needs of their communities.
6. To monitor environmental impacts of the SSC and to recommend measures as necessary to prevent adverse effects on the environment.
7. To promote and stimulate cooperative planning among the local governments affected to accommodate SSC-related growth for the benefit of all citizens.
8. To meet as necessary, at the call of the Chairperson or of the Governor.

Section 4. ADMINISTRATION

1. Financial support for the Commission may be provided out of funds available to the North Carolina Board of Science and Technology in response to the requests of the Chairperson. All expenditures must be approved beforehand by the Chairperson.

2. Subject to the availability of funds, members of the Commission may be reimbursed for travel and subsistence expenses as authorized by NCGS Section 138-5.

3. The SSC Project shall provide the staff and administrative support for the Commission.

Section 5. REPORTS

1. The Commission shall present interim reports and recommendations to the Governor at least annually.

2. The Commission shall present a Final Report and Recommendations to the Governor before its dissolution.

Section 6. IMPLEMENTATION AND DURATION

1. This order shall be effective immediately.

2. This Commission shall dissolve at the pleasure of the Governor.

Done in Raleigh, North Carolina, this 11th day of March, 1988.

EXECUTIVE ORDER NUMBER 69

**GOVERNOR'S TASK FORCE ON
AQUACULTURE IN NORTH CAROLINA**

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

Section 1.

There is hereby established the Governor's Task Force on Aquaculture in North Carolina. The Task Force shall consist of a Policy Committee and such technical committees as the Policy Committee shall create.

Section 2.

The Policy Committee shall consist of not more than fifteen (15) members. Members of the Policy Committee shall include:

- a. Agriculture Advisor to the Governor;
- b. President of the UNC System;
- c. President of Duke University;
- d. Secretary of Natural Resources and Community Development;
- e. Commissioner of Agriculture;
- f. Secretary of Administration;
- g. Secretary of Commerce;
- h. Science Advisor to the Governor;
- i. President of the North Carolina Farm Bureau;
- j. President of the North Carolina Biotechnology Center;
- k. A member recommended by the Lieutenant Governor;
- l. A member recommended by the Speaker of the House;
- m. Up to four (4) members at large appointed by the Governor.

The Secretary of Administration shall serve as Chairman of the Task Force. All members named under subsections (k), (l), (m) above shall serve at the pleasure of the Governor and the Governor shall fill all vacancies. If a vacancy occurs in a seat held by a member recommended by the Lieutenant Governor or Speaker of the House, the Governor shall fill the vacancy after recommendation by the appropriate official.

Section 3.

The Policy Committee may form such technical committees as necessary to study and report on the various aspects of aquaculture in this State.

The members of the technical committees shall be drawn from professional and technical experts in the various related fields. Members of the Technical Committees shall be asked to serve by the Policy Committee and shall serve at its pleasure.

Section 4.

The Task Force shall have the following responsibilities:

- a. Analyze environmental, financial, marketing, processing, educational and legal issues within the aquaculture industry.
- b. Formulate recommendations for changes in current North Carolina statutes concerning the aquaculture industry.
- c. Formulate recommendations for agency and university programs to promote and develop the aquaculture industry.
- d. Formulate recommendations for research programs, demonstration projects, and other technology transfer activities.
- e. Perform other relevant studies and services as recommended by the Policy Committee.
- f. Prepare a final report to the Governor recommending an aquaculture policy for North Carolina. This report shall be submitted to the Governor no later than January 1, 1989.

Section 5.

The Department of Agriculture and the Department of Administration shall provide necessary staffing and administrative support for the Task Force, as directed by the Policy Committee.

Section 6.

This Order shall become effective immediately and shall remain in effect for one year.

Done in Raleigh, North Carolina, this 11th day of March, 1988.

EXECUTIVE ORDER NUMBER 70

**WOMEN'S ECONOMIC DEVELOPMENT
ADVISORY COUNCIL**

By authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby recreate and establish in the Department of Commerce the North Carolina

Women's Economic Development Advisory Council. This Council will be composed of at least twelve (12) members who have distinguished themselves by their accomplishments in the private sector. The membership of this Council will, to the extent practical, contain representatives from all major geographic areas of the State. The members of this Council will be appointed by the Governor and will serve at the pleasure of the Governor. Those members appointed to the Women's Economic Development Advisory Council by the Governor under Executive Order Number 7 retain their membership and continue to serve at the pleasure of the Governor.

Section 2. The Governor shall designate a Chairman from the membership of the Council. The Council will meet at the call of the Chair or the Secretary of the Department of Commerce. The current Chair shall continue to serve as Chair unless directed otherwise by the Governor.

Section 3. The Women's Economic Development Advisory Council will have the duty to thoroughly explore opportunities for women in our economy; carefully evaluate those opportunities; and advise the Secretary of Commerce on strategic courses of action, consistent with the State's economic development philosophy, which will best promote and encourage equal opportunity and advancement and integration of women into all aspects of North Carolina's economy. The primary focus of the Council shall be in the area of business opportunities, so as not to be duplicative of complementary efforts to enhance the status of women in the North Carolina economy.

Section 4. The Department of Commerce shall provide the administrative support for this Council.

Section 5. The members of the Women's Economic Development Advisory Council shall be entitled to reimbursement for subsistence and travel expenses authorized for State Boards and Commissions as provided in N.C.G.S. 138-5. Funds are to be made available as authorized by the Department of Commerce.

Section 6. This order supersedes and replaces Executive Order 7 signed on June 28, 1985.

Section 7. This Executive Order is effective immediately and shall remain in effect until May 15, 1989, or unless terminated earlier or extended by further Executive Order.

Done in the Capitol City of Raleigh, North Carolina, this the 11th day of March, 1988.

EXECUTIVE ORDER NUMBER 71

GOVERNOR'S TASK FORCE ON RAIL PASSENGER SERVICE

North Carolina and the nation were built on and along railroads. In particular, our urban Piedmont has been shaped in large part by the General Assembly's investment in the North Carolina Railroad over 130 years ago. Many of those Piedmont cities are now leading North Carolina's dramatic population and economic growth.

With that growth comes an ever-increasing need for intercity, regional, and urban transportation. Some of our intercity traffic today moves via Amtrak along existing railroad routes through North Carolina. In the future, even greater reliance may need to be placed on rail passenger opportunities.

Today, Amtrak is considering changing its intercity routes serving North Carolina. At the same time, the private freight railroads continue to react to economic forces by abandoning service and routes. These decisions, made outside North Carolina, not only affect today's transportation patterns, but could well limit our transportation choices for the future. Passenger trains move on some of these routes today, and may well need to move on others in the future. Possibly, other forms of passenger transportation could also use those corridors.

As the North Carolina Railroad and the Atlantic and North Carolina Railroad prepare to renegotiate their right-of-way leases between Charlotte, Greensboro, Raleigh and Morehead City, consideration should be given to preservation of future options for inter-urban transit by a carrier able to offer affordable, reliable rail passenger service.

This corridor, as well as other rail corridors in and across the state, may well hold opportunities for North Carolina's future mobility. Every effort should be given to exploration of short-term as well as longer-term opportunities for rail passenger service along these corridors in North Carolina.

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

Section 1. ESTABLISHMENT

The Governor's Task Force on Rail Passenger Service is hereby established. The Task Force

shall consist of at least ten and not more than fifteen members appointed by the Governor to serve at the pleasure of the Governor. All vacancies shall be filled by the Governor. The Governor shall designate one of its members as Chairman and one as Vice-Chairman. The Secretary of Transportation or his designee shall serve as an ex-officio member and shall not be included in the fifteen members to be appointed by the Governor.

Section 2. FUNCTIONS

(1) The Task Force shall meet regularly at the call of the Chairman or the Governor. The Task Force is authorized to conduct public hearings for the purpose of receiving the comments and suggestions of citizens throughout the State.

(2) The duties of the Task Force shall be to conduct a study of the present, near term, and future needs for rail transit service connecting major cities of North Carolina, with emphasis on the potential for providing affordable service.

Section 3. ADMINISTRATION

(a) The Director of Public Transportation of the Department of Transportation shall provide staff support to the Task Force. The Secretary of Transportation may designate such other personnel from his staff as he deems appropriate and necessary to furnish guidance and assistance to the Task Force.

(b) The Department of Transportation is authorized, subject to the availability of funds, to retain consulting service(s) or employ other

professional(s) if it determines that such service(s) or professional(s) would offer a cost-efficient method of gathering and analyzing information. Funds for the retention and payment of such service(s) or professional(s) shall be made available from funds authorized for the Division of Public Transportation.

(c) Members of the Task Force may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Funds for reimbursement for such expenses shall be made available from funds authorized for the Division of Public Transportation.

(d) Funds for the support of the Task Force study, in addition to expenses authorized in Section 3, subsections (b) and (c) above, shall be made available from funds authorized for the Division of Public Transportation.

Section 4. REPORTS

The Task Force shall present a report to the Governor not later than the 15th day of January, 1989.

Section 5. IMPLEMENTATION AND DURATION

(1) This order shall be effective immediately.

(2) The Commission shall dissolve at the pleasure of the Governor, but no later than December 30, 1989.

Done at Raleigh, North Carolina this 11th day of March, 1988.

VOTING RIGHTS ACT FINAL DECISION LETTERS

[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
Civil Rights Division

WBR:MAP:K1F:gmh
DJ 166-012-3
T1281
T3854-3858

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

March 4, 1988

David A. Holec, Esq.
City Attorney
P.O. Box 1388
Lumberton, North Carolina 28358

Dear Mr. Holec:

This refers to the December 7, 1987, annexations to the City of Lumberton in Robeson County, 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 submission on January 4, 1988.

The Attorney General does not interpose any objections to the changes in question. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U.S. Department of Justice
Civil Rights Division

WBR:SSC:TGL:gmh
DJ 166-012-3
T1769-1774

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Dewitt F. McCarley, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the six annexations [Ordinance Nos. 1766, 1779, 1780, 1794, 1795, and 1797 (1987)] to the City of Greenville in Pitt County, 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 submission on January 15, 1988.

The Attorney General does not interpose any objections to the changes in question. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend regulations cited as 10 NCAC 9D .0302, .0303 and .0328.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 1:30 p.m. on May 9, 1988 at Norton Board Room, 6th Floor, Cooper Memorial Health Building, 225 North McDowell 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) 733-3134. 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 9 - HEALTH: LABORATORY

SUBCHAPTER 9D - CERTIFICATION AND IMPROVEMENT

SECTION .0300 - LABORATORY CERTIFICATION

.0302 NOTICE AND PROCEDURE

(a) A laboratory seeking certification must request in writing an application for certification from the Department of Human Resources, Division of Health Services, Laboratory Section, 306 North Wilmington Street, Raleigh, North Carolina, 27611. The application for certification shall include:

(6) Payment of the certification fee as specified in Rule .0303.

Statutory Authority G.S. 130A-315; 130A-326.

.0303 CERTIFICATION: CERTIFICATION RENEWAL: AND FEES

(b) A laboratory shall renew its certification every ~~two years.~~ year by payment of the certification fee by December 1. If the fee has not been paid by December 31 of each year, the laboratory's certification will not be renewed, and

the laboratory must apply for recertification pursuant to Rule .0328. Notwithstanding the above, the first certification renewal fee after the effective date of these Rules shall be due on February 1, 1988 and must be paid on or before March 1, 1988 or the laboratory's certification will not be renewed. The renewal shall be Every two years, the laboratory shall renew its certification based upon an on-site evaluation by a laboratory certification evaluator and compliance with the minimum requirements of this Section.

(d) The certification fee shall be twenty dollars (\$20.00) per analyte. The minimum and maximum fee per analyte group shall be as set out in G.S. 130A-326(7). The analyte groups are as follows:

- Inorganic Chemistry
- Organic Chemistry I (Synthetic Organic Chemicals)
- Organic Chemistry II (Volatile Organic Chemicals)
- Total Coliforms
- Radio Chemistry

The certification fee shall not be prorated nor refunded.

Statutory Authority G.S. 130A-315; 130A-326.

.0328 RECERTIFICATION

(a) A laboratory is eligible for recertification six months after revocation or nonrenewal of its certificate, except in the following instances:

(3) A laboratory for which certification was not renewed for failure to pay the certification fee by the date required in Rule .0303 is eligible for recertification after paying the overdue certification fee; a laboratory applying for recertification on this basis shall not be required to pay an additional certification fee with the application.

Statutory Authority G.S. 130A-315; 130A-326.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26G .0402; 26H .0102 - .0104, .0107, .0401.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 1:30 p.m. on May 16, 1988 at North Carolina Division

of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by May 16, 1988 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on these proposed rules is available upon written request from the same address.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26G - PROGRAM INTEGRITY

SECTION .0400 - AGENCY RECONSIDERATION REVIEW

.0402 RECONSIDERATION REVIEW FOR PROGRAM ABUSE

~~(F) The provider will be instructed that the request for an Executive Decision or hearing must be received within the time set by Rule .0403(b) of this Subchapter. If by that date the request for an Executive Decision has not been received, the administrative measures shall be implemented without further notification.~~

Authority G.S. 108A-25(b); 42 C.F.R. Part 455.

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

.0102 RATE SETTING METHODS

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

- (1) The direct rate is based on the Medicaid cost per day incurred in the following cost centers:
 - (A) Nursing,
 - (B) Dietary or Food Service,
 - (C) Laundry and Linen
 - (D) Housekeeping,
 - ~~(F) Medical Records,~~
 - ~~(F)~~ (E) Patient Activities,
 - ~~(G)~~ (E) Social Services,
 - ~~(H)~~ Utilization Review,
 - ~~(H)~~ (G) Ancillary Services (includes several cost centers).

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447 Subpart C.

.0103 REASONABLE AND NON-ALLOWABLE COSTS

(a) Providers have an affirmative responsibility to operate economically and efficiently so that their costs are reasonable. Providers are required to provide services at the lowest possible costs in compliance with Federal and State laws, regulations for licensing and certification, and standards for quality of care and patients' safety. Providers are also responsible for the financial actions of their agents (e.g., management companies) in this regard.

(b) The state may publish guidelines to define reasonable costs in certain areas after careful study of industry-wide cost conditions.

(c) The following costs are considered non-allowable facility costs because they are not related to patient care or are specifically disallowed under the North Carolina State Plan:

- (1) bad debts;
- (2) advertising--except personnel want ads, and one line yellow page (indicating facility address);
- (3) life insurance (except for employee group plans);
- (4) interest paid to a related party;
- (5) contributions, including political or church-related, charity and courtesy allowances;
- (6) prescription drugs and insulin (available to recipients under State Medicaid Drug Program);
- (7) vending machine expenses;
- (8) barber and beauty shop expenses;
- (9) state or federal corporate income taxes, plus any penalties and interest;
- (10) telephone or television for personal use of patient;
- (11) penalties or interest on income taxes;
- (12) dental expenses--except for consultant fees as required by law;
- (13) personal income taxes, plus any penalties and interest;
- (14) farm equipment and other expenses;
- (15) retainers, unless itemized services of equal value have been rendered;
- (16) physicians fees for other than utilization review or medical directors or medical consultants as required by law;
- (17) country club dues;
- (18) sitter services or private duty nurses;
- (19) capital expenditures subject to either section 1122 or certificate of need review not receiving prior approval by the appropriate state agency;
- (20) conversions, leases, and management agreements not reviewed by the appropriate state agency;

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- (21) ~~guest trays, meals;~~
- (22) ~~morgue boxes;~~
- (23) ~~leave days--except therapeutic leave;~~
- (24) ~~personal items and clothing, and laundering of personal clothing; and~~
- (25) ~~any other items which, under the given circumstances, are considered to be non-allowable.~~

(d) For those non-allowable expenses which generate income, such as prescription drugs, vending machines, barber and beauty shop, etc., expense should be ~~adjusted, identified as a non-reimbursable cost center,~~ where determinable. If the provider cannot determine the proper amount of expense which is to be ~~adjusted, identified,~~ then the income which was generated must be offset in full to the appropriate cost center.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0104 COST REPORTING: AUDITING AND SETTLEMENTS

(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a report of its costs and other financial information such as the working trial balance related to reimbursement annually. The report must include costs from the fiscal period beginning on October 1 and ending on September 30 and must be submitted to the state on or before the December 31 that immediately follows the September 30 year end. Facilities that file reports after that date will be charged a penalty of up to five hundred dollars (\$500.00) per day for each day after December 31 that the report is delinquent. The Division of Medical Assistance may extend the deadline for filing the report if in its view good cause exists for the delay.

(d) The specific cost reporting guidelines related to this plan are set forth in the following paragraphs. The state will publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this Rule as related operating expenses. These guidelines will be issued prior to April 1, 1985. The guidelines may be subsequently modified prior to the beginning of each cost reporting period. In no case, however, shall any modifications be applied retroactively. A provider should request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item.

- (1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related

operating expenses needed to provide nursing care to patients, including medical records, utilization review, the Medical Director and the Pharmacy Consultant. Also, the cost (rental or purchase) of special equipment that is medically required to sustain life may be charged to this cost center. Such equipment shall include oxygen concentrators, respirators and ventilators.

- (2) Dietary Cost Center includes the cost of staff, raw food, and supplies needed to prepare and deliver food to patients.
- (3) Laundry and Linen Cost Center includes the cost of staff, bed linens - replacement mattresses and related operating expenses needed to launder facility provided items.
- (4) Housekeeping Cost Center includes the cost of staff and supplies needed to keep the facility clean.
- (5) ~~Medical Records Cost Center includes the cost of staff, supplies and related operating expense needed to maintain patient records.~~
- (6) (5) Patient Activities Cost Center includes the cost of staff, supplies, and related operating expenses needed to provide appropriate diversionary activities for patients.
- (7) (6) Social Services includes the cost of social workers and related operating expenses needed to provide necessary social services to patients.
- (8) ~~Utilization Review includes all costs required to review patient status.~~
- (9) (7) Ancillary Cost Center includes the cost of the following special ancillary services: Radiology, Laboratory, Physical Therapy, Occupational Therapy, Speech Therapy, Intravenous Fluids and Medicare Part B billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under that program. all therapy services covered by the Medicaid program and billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under the Medicare B program.
- (10) (8) Administrative and General Cost Center includes all costs needed to administer the facility, including the staff costs for the administrator, assistants, billing and secretarial personnel, personnel director and pastoral expenses. It includes the costs of copy machines, dues and subscriptions, transportation, income taxes, legal and accounting fees, start-up, and a variety of other administrative costs

as set forth in the Chart of Accounts. Interest expense other than that stemming from mortgages or loans to acquire physical plant items should be reported here.

(11) (9) Property Ownership and Use:

(A) This cost center includes all allowable costs related to the acquisition and/or use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except the special equipment, as specified in .0104(d)(1) of this Rule that may be charged to the nursing cost center. Specifically it includes the following items:

- (i) all equipment expense regardless of equipment nature,
- (ii) lease expense for ~~any~~ all physical assets,
- (iii) depreciation of assets utilizing the straight line method.
- (iv) interest expense of asset related liabilities, e.g., mortgage expense,
- (v) property taxes.

(B) For the purposes of computing allowable lease expense and for balance sheet presentation for Return on Equity computations (see Rule .0105) leases shall not be capitalized.

(C) In establishing the allowable cost for depreciation and for interest on capital indebtedness, with respect to an asset which has undergone a change of ownership, the valuation of the asset shall be the lesser of allowable acquisition cost less accumulated depreciation to the first owner of record on or after July 18, 1984 or the acquisition cost to the new owner. Depreciation recapture will not be performed at sale. The method for establishing the allowable related capital indebtedness shall be as follows:

- (i) The allowable asset value shall be divided by the actual acquisition cost.
- (ii) The product computed in step I shall be multiplied times the value of any related capital indebtedness.
- (iii) The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable.

The allowable asset and liability values established through the process in this Rule shall be those used in balance sheet presentations for return on equity computation (see Rule .0105). These procedures are established to implement

the provisions of PL 98-369 Section 2314.

(12) (10) Operation of Plant and Maintenance Cost Center includes all costs necessary to operate or maintain the functionality and appearance of the plant. These include: maintenance staff, utilities, repairs and maintenance to all equipment.

(13) (11) Equipment Expense. Equipment is defined as an item with a useful life of more than two years and a value greater than two hundred dollars (\$200.00). Equipment ownership and use costs shall be reported in the Property Ownership and Use Cost Center. Equipment maintenance and repair costs shall be reported in the Operation of Plant and Maintenance Cost Center. Equipment should not be reported elsewhere.

(14) (12) Training Expense. Training expense shall be allocated to the appropriate benefiting cost centers. Adequate records to support the allocation shall be maintained and presented upon request to establish allowability.

(15) (13) Home Office Costs. Home office costs are generally charged to the Administrative and General Cost Centers. In some cases, however, certain personnel costs which are direct patient care oriented may be allocated to "direct" patient care cost centers with prior advice of the state agency. if time records are maintained to document the performance of direct patient care services. No Home office overhead may be so allocated.

(16) (14) Management Fees. Management fees are charged to the Administrative and General Cost Center. In some cases, however, a portion of a management fee may be allocated to a direct patient care cost center with prior advice of the state agency. if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Adequate records to support these costs must be made available to staff of the Division of Medical Assistance to support these costs.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

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.0107 PAYMENT ASSURANCE

(d) In all circumstances involving third party payment, Medicaid is the payor of last resort. No payment will be made for a Medicaid recipient who is also eligible for Medicare, Part A, for the first 20 days of care rendered to skilled nursing patients. Medicaid payments for co-insurance for such patients will be made for the subsequent 21st through the 100th day of care. ~~However, such co-insurance will be limited to the difference between the amount paid by Medicare and the rate established by the state for the facility involved.~~ In the case of ancillary services providers are obligated to:

- (1) maintain detailed records or charges for all patients;
- (2) bill the appropriate Medicare Part B carrier for all services provided to Medicaid patients that may be covered under that program; and
- (3) allocate an appropriate amount of ancillary costs, based on these charge records adjusted to reflect Medicare denials of coverage, to Medicare Part B in the annual cost report. For failure to comply with this requirement, the state may charge a penalty of up to 5 percent of a provider's indirect patient care rate for each day of care that is provided during the fiscal year in which the failure occurs. This penalty shall not be considered an allowable cost for cost reporting purposes.

<u>.59520</u>	<u>550.00</u>	<u>.90260</u>	<u>22.00</u>
<u>.59521</u>	<u>800.00</u>	<u>.90270</u>	<u>28.00</u>
<u>.59540</u>	<u>600.00</u>	<u>.90280</u>	<u>40.00</u>
<u>.59541</u>	<u>850.00</u>	<u>.90282</u>	<u>15.00</u>
<u>.59560</u>	<u>600.00</u>	<u>.90292</u>	<u>20.00</u>
<u>.59561</u>	<u>850.00</u>	<u>.90300</u>	<u>30.00</u>
<u>.59580</u>	<u>600.00</u>	<u>.90315</u>	<u>40.00</u>
<u>.59581</u>	<u>850.00</u>	<u>.90320</u>	<u>50.00</u>
<u>.90000</u>	<u>20.00</u>	<u>.90340</u>	<u>20.00</u>
<u>.90010</u>	<u>22.00</u>	<u>.90350</u>	<u>20.00</u>
<u>.90015</u>	<u>30.00</u>	<u>.90360</u>	<u>25.00</u>
<u>.90017</u>	<u>40.00</u>	<u>.90370</u>	<u>30.00</u>
<u>.90020</u>	<u>45.00</u>	<u>.90600</u>	<u>25.00</u>
<u>.90030</u>	<u>9.00</u>	<u>.90605</u>	<u>25.00</u>
<u>.90040</u>	<u>14.00</u>	<u>.90610</u>	<u>50.00</u>
<u>.90050</u>	<u>17.00</u>	<u>.90620</u>	<u>60.00</u>
<u>.90060</u>	<u>21.00</u>	<u>.90630</u>	<u>60.00</u>
<u>.90070</u>	<u>26.00</u>	<u>.90640</u>	<u>18.00</u>
<u>.90080</u>	<u>35.00</u>	<u>.90641</u>	<u>18.00</u>
<u>.90200</u>	<u>30.00</u>	<u>.90642</u>	<u>20.00</u>
<u>.90215</u>	<u>50.00</u>	<u>.90643</u>	<u>26.00</u>

In addition fees for all specialties for early and periodic screening, detection and treatment shall be as follows:

<u>Patient Age</u>	<u>Fee</u>
<u>Birth to 4</u>	<u>\$ 30.00</u>
<u>4 and Over</u>	<u>45.00</u>

(f) In no case shall charges for services provided under the Medicaid Program exceed the provider's customary charges to the general public for such services.

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

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

SECTION .0400 - PROVIDER FEE SCHEDULES

.0401 PHYSICIAN FEE SCHEDULE

(e) In no case shall charges for services provided under the Medicaid program exceed the provider's customary charges to the general public for such services. Notwithstanding any of the foregoing provisions of this Section the fees for the following services shall be paid to all Specialties at the levels specified below. [The services are identified by the identifying codes that are set forth in the Physicians' Current Procedural Terminology Fourth Edition (CPT-4) 1987 manual published by the American Medical Association.]

<u>Code</u>	<u>Fee</u>	<u>Code</u>	<u>Fee</u>
<u>.59400</u>	<u>\$625.00</u>	<u>.90220</u>	<u>\$ 70.00</u>
<u>.59410</u>	<u>350.00</u>	<u>.90225</u>	<u>40.00</u>
<u>.59500</u>	<u>580.00</u>	<u>.90240</u>	<u>14.00</u>
<u>.59501</u>	<u>850.00</u>	<u>.90250</u>	<u>16.00</u>

TITLE 15 - DEPARTMENT OF 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 the regulation cited as 15 NCAC 7J .0409.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 26, 1988 at Ramada Inn, 1701 S. Virginia Dare Trail, Kill Devil Hills, NC 27948.

Comment Procedures: All persons interested in these matters are invited to attend the public

hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any persons desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7J - PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS: VARIANCE REQUESTS: APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS: AND DECLARATORY RULINGS

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

.0409 CIVIL PENALTIES

(a) Purpose and Scope. These ~~Regulations~~ Rules provide the procedures and standards governing the assessment, remission, mitigation and appeal of civil penalties assessed by the Coastal Resources Commission and its delegates pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used herein shall be as defined in G.S. 113A-103 and as follows:

- (1) "Commission" means the N. C. Coastal Resources Commission;
- (2) "Delegate" means the director or other qualified employee of DNRCD to whom the commission has delegated authority to act in its stead in relation to the assessment of civil penalties pursuant to this Section;
- (3) "Director" means the Director, Office Division of Coastal Management;
- (4) "Respondent" means the person against whom ~~an assessment has been proposed~~ and a penalty has been assessed.

(c) ~~When Assessable.~~ Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).

- (1) ~~is required but fails to apply for or to secure a permit required by G.S. 113A-122, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;~~
- (2) ~~fails to file, submit, or make available, as the case may be, any documents, data or reports required by the commission pursuant to this article;~~
- (3) ~~refuses access to the commission or its duly designated representative, who has~~

~~sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting an investigation provided for in this article;~~

- (4) ~~violates any duly adopted regulation of the commission implementing the provisions of this article; provided, however, that this paragraph shall not apply to regulations relating to minor developments.~~

(d) Notice of Violation. The commission ~~may designate and authorize~~ designates and authorizes employees of the DNRCD to issue in the name of the commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation, shall request that the illegal activity be ceased, and shall be delivered personally or by registered or certified mail. As soon as is feasible a notice will be followed by a ~~proposal to assess a civil penalty assessment or action~~ proposal to assess a civil penalty assessment or action to pursue some other appropriate remedy.

(e) Notice of ~~Proposals To Assess~~ Assessment.

- (1) ~~The commission or its delegate may propose to assess a penalty by notifying the person against whom the assessment is a penalty by notifying the person against whom the assessment is proposed by registered or certified mail. Any person against whom a penalty is assessed shall be notified by certified or registered mail.~~ The commission hereby delegates to the director of the Office Division of Coastal Management the authority to propose assessment of assess civil penalties according to the procedures set forth in this Regulation. Rule. The director shall propose an assessment assess a civil penalty of not less than fifty dollars (\$50.00) for a minor development violation or not less than one hundred dollars (\$100.00) for a major development violation in all cases where he has determines determined that there is probable cause to believe that the respondent has committed a violation and that other available remedies are inappropriate or inadequate.
- (2) The notice of a proposed assessment shall specify the reason for assessment and shall inform the assessed person of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. the date of the proposed administrative hearing concerning the assessment, and may specify the amount of

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~~the proposed assessment. The hearing shall be no sooner than 15 days after the mailing of the notice of the proposed assessment.~~

- (3) Upon receipt of the ~~proposed~~ assessment, the respondent shall immediately cease all of those activities which the ~~proposed~~ assessment sets forth as the reason(s) for the assessment pending the result of any administrative hearing or superior court proceeding held pursuant to the provisions of this Rule.
- (f) Amount of Assessment.
 - (1) A civil penalty of not more than two thousand five hundred dollars (\$2,500) may be assessed for any violation.
 - (2) If any action or failure to act for which a penalty may be assessed under this Rule is willful, the commission or its delegate may assess a penalty not to exceed two thousand five hundred dollars (\$2,500) for each separate violation. ~~after the first assessment, provided, however, that no penalty shall be imposed under this Rule pending court review of a first assessment, which has been properly appealed. If any person continues to violate by action or inaction any rule or order of the commission after receipt of proper written notice from the Division of Coastal Management each day the violation continues or is repeated may be considered to constitute a separate violation subject to the foregoing penalties.~~
 - (3) In determining the amount of the penalty the commission or its delegate shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. In determining the degree and extent of harm caused, the commission may consider the duration of the violation, damage to public resources, damage to private property, effectiveness of preventive and restorative measures taken by the assessed person, the previous record of the assessed person in complying or not complying with the laws and regulations implemented by the commission; and any other factors relevant to the harm caused by an alleged violation.
 - (4) Pursuant to Subparagraph (f)(3) of this Rule, civil penalties for major development violations shall be assessed in accordance with the following criteria. Assessments resulting from any unauthorized development within a designated Area of Environmental Concern which do not fit the following criteria shall be made

using the best information available at the time of the violation and from subsequent investigation.

- (A) Unauthorized development which could have been permitted under coastal management regulations shall be subject to ~~the~~ a minimum civil penalty of one hundred dollars (\$100.00). This category shall include only development that can, at the time of assessment, meet all of the following four criteria:
 - (i) consistency with the local land use plan;
 - (ii) consistency with AEC standards and state guidelines;
 - (iii) proof of notification of adjacent riparian property owners; and
 - (iv) no substantial objections from these adjacent riparian property owners.
- (B) Civil penalties for development which could not have been permitted under coastal management regulations shall be assessed as follows. This category shall include development that is sufficiently inconsistent with LCP's Land Use Plans, AEC standards and/or state policies to have warranted denial if the permit application process had been followed. In all cases, restoration shall be required to the fullest extent practicable consistent with the need to avoid additional damage to the resources and penalties shall be assessed as follows:
 - (i) Development which involves wetland alteration or other damage which ~~can~~ be has been completely restored with no permanent or irreversible losses of productivity shall be subject to the minimum civil penalty of one hundred dollars (\$100.00).
 - (ii) Development which does not involve permanent or irreversible losses of resources, but cannot be adequately restored or ~~are~~ is of such a nature that it ~~reflect~~ reflects a reckless disregard for ~~their~~ its impact or ~~have~~ has a high potential for permanent, long-term or irreversible losses of resources shall be restored to the fullest extent practicable and shall be subject to a civil penalty one-half of that specified for the area affected according to Schedule A of this Rule.
 - (iii) Development which involves wetlands alteration or other damage which causes permanent or irreversible losses of coastal resources shall be restored to the fullest extent practicable and shall

be subject to a civil penalty of an amount graduated according to Schedule A.

- (iv) For development that does not involve disruption of an area of a specific size, has an undetermined impact, or impacts that are difficult or impractical to determine, reflects a reckless disregard for the ~~regulations rules~~ and/or has a high potential for permanent or irreversible losses of resources, the violator shall be required to restore to the fullest extent practical and shall be subject to the minimum ~~\$100 one hundred dollar (\$100.00)~~ assessment. ~~for the first offense. After the first offense for a similar development activity within the same AEC, the preceding assessment will be doubled for the second and each succeeding offense.~~
- (v) ~~Development involving a partial or complete structure which does not comply with location or setback standards shall be removed to comply with applicable standards and the liable party shall be assessed the minimum penalty of one hundred dollars (\$100.00). If the structure is not removed, the liable party shall be subject to a fine of two thousand five hundred dollars (\$2500) for habitable structures and two hundred fifty dollars (\$250.00) for walkways over dunes and similar small, non-habitable structures. If appropriate, a court order shall be sought to compel relocation of the structure in compliance with location standards. Any structure or part of a structure that is constructed in violation of a rule or order of the commission and is inconsistent with applicable guidelines for development shall be removed or modified to those guidelines and the liable party shall be assessed the minimum penalty of one hundred dollars (\$100.00). If the structure is not removed or modified as requested by the Division of Coastal Management, a court order will be sought to compel the necessary removal or modification and the liable party shall be subject to continuing assessment according to Subparagraph (f)(4)(G) of this Rule.~~
- (C) Violations resulting from non-compliance with permit conditions or specifications shall be evaluated according to their temporary or permanent adverse impacts on wetlands, water quality, fishery re-

sources, primary nursery areas, mudflats, and/or primary dunes. If the preceding impacts occur, restoration shall be required to the extent practicable and the amount of the assessment shall be determined in accordance with Subparagraph (f)(4)(B) of this Rule. If there has been no resource loss and the project is consistent with the AEC standards, the assessment shall be determined in accordance with Subparagraph (f)(4)(A) of this Rule. Such permit ~~conditions~~ violations shall include, but not be limited to, the following:

- (i) failure to honor the ~~shrimp~~ development moratorium;
 - (ii) failure to excavate behind a silt screen or earthen plug;
 - (iii) failure to stabilize spoil material;
 - (iv) improper operation of a disposal area;
 - (v) location of a spoil disposal area outside of permitted boundaries;
 - (vi) depth of excavation exceeding permitted limits; or
 - (vii) bulkhead alignment outside of permit specifications.
- (D) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Subparagraphs (f)(4)(A), (B) and (C) of this Rule.
- (E) Willful and intentional violations. The penalty assessed under the criteria listed in Subparagraphs (f)(4)(A),(B) and (C) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Section may not exceed two thousand five hundred dollars (\$2500) and in no case be less than five hundred dollars (\$500.00) for each separate violation. A violation shall be considered to be willful and intentional when:
- (i) The violator has received clear and direct instructions from a representative of the Division of Coastal Management that a permit would be required for the proposed development and the violator subsequently undertook development without a permit; or
 - (ii) The violator has committed previous violations involving the same or similar development activities in the same AEC.
 - (iii) The violator has refused or failed to restore a damaged area as requested by the Division of Coastal Management

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pursuant to a restoration agreement or as required under the schedule for civil penalty assessments as set out in Subparagraphs (f)(4)(B) and (C) of this rule. If appropriate a court order shall also be sought to require restoration. The minimum penalty assessed under Subparagraph (f)(4)(E)(i) of this Rule shall be five hundred dollars (\$500.00).

(F) Assessments against contractors. Any contractor, subcontractor, person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty as follows:

- (i) For the first violation, the contractor(s) shall receive a notice of violation and no civil penalty shall be assessed;
- (ii) For the second and each succeeding ~~offense~~ violation within the same AEC, the contractor(s) shall be assessed a penalty in accordance with Subparagraph (f)(4) ~~(A), (B) and (C)~~ of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Subparagraph (f)(4)(E) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the initial portion of the penalty and the contractor shall be assessed the doubled portion.

(G) Continuing violations.

- (i) Any development in violation of CAMA permit requirements that continues after receipt of proper notice from the Division of Coastal Management may be subject to a minimum daily penalty of five hundred dollars (\$500.00) as established by (f)(E)(i) of this Rule.
- (ii) Refusal or failure to restore a damaged area as requested by the Division of Coastal Management may be considered a continuing violation and shall be subject to the minimum penalty of one hundred dollars (\$100.00) per day if such refusal or failure to restore does not result in additional environmental resource damage or loss. When resources continue to be affected by the violation, the amount of the penalty will be determined according to (f)(4)(B) of this Rule. The continuing penalty period will be calculated from the date of receipt of the notice of continuing violation and run until:

(I) the division's order is satisfied, or

(II) the party enters into good faith negotiations with the division, or

(III) the party contests the division's order in a judicial proceeding by raising a justifiable issue of law or fact therein.

The continuing penalty period will resume if the party terminates negotiations without reaching an agreement with the division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the division.

(5) Pursuant to Subparagraph (f)(3) of this Rule, civil penalties for minor development violations shall be assessed in accordance with the following criteria:

(A) Development which could have been permitted shall be assessed a minimum civil penalty of fifty dollars (\$50.00). This category shall include only development that meets all of the following criteria:

- (i) consistency with the local land use plan;
- (ii) consistency with AEC standards and State guidelines; and
- (iii) no significant objections from adjacent property owners.

(B) Civil penalties for development which could not have been permitted, that is those activities that are sufficiently inconsistent with LUP's, AEC standards or other state guidelines to have warranted denial if the permit application process had been followed, shall be assessed as follows:

- (i) Development which resulted in no resource damage shall be brought into compliance with provisions of the local land use plan, AEC standards and other state guidelines and assessed a civil penalty of one hundred dollars (\$100.00);
- (ii) For development which involves resource damage that can be completely restored so that there will be no permanent or long-lasting impacts, the violator shall be required to restore to the fullest extent practicable and shall be assessed a civil penalty of one hundred dollars (\$100.00);
- (iii) Development which violates estuarine shoreline AEC standards such that there will be permanent or long-lasting impacts on estuarine water quality shall require restoration to the fullest extent practicable and shall be assessed a civil

- penalty of two hundred fifty dollars (\$250.00);
- (iv) Disturbance or reduction of a primary or frontal dune by less than one-third ~~and less than two-thirds~~ of its height or width shall require restoration to the fullest extent practicable and assessment of a civil penalty in the amount of one hundred fifty dollars (\$150.00);
 - (v) Disturbance or reduction of a primary or frontal dune by more than one-third of its height or width and less than two-thirds of its height or width shall require restoration to the fullest extent practicable and assessment of a civil penalty in the amount of two hundred dollars (\$200.00);
 - (vi) Disturbance or reduction of a dune by more than two-thirds of its height or width shall require restoration to the fullest extent practicable and assessment of a civil penalty in the amount of two hundred fifty dollars (\$250.00);
 - (vii) Filling with unauthorized materials and/or covering natural dune vegetation shall require restoration to the fullest extent practicable and assessment of a civil penalty in the amount of two hundred dollars (\$200.00).
- (C) Violations resulting from noncompliance with permit conditions or specifications shall be treated as activities which may or may not have been permitted as in Subparagraphs (f)(5)(A) and (B) of this Rule.
- (D) Violations of public agencies (i.e. towns, counties and state agencies) shall be handled by the local permit officer or authorized DCM staff within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government he represents. Penalties shall be assessed in accordance with Subparagraphs (f)(5)(A),(B) and (C) of this Rule.
- (E) For the following types of violations civil penalties assessed pursuant to the criteria listed in Subparagraphs (f)(5)(A), (B), (C) and (D) of this Rule shall be doubled, but shall in no case exceed two hundred fifty dollars (\$250.00) for each separate violation:
- (i) Violations that are willful and intentional or reflect a careless and reckless disregard for their impact. A violation shall be considered to be willful and intentional when the violator has received clear and direct instructions from the LPO or a DCM representative prior to violation that the activity would be in violation of CAMA standards, state guidelines or the local land use plan or requires a permit. In such cases, each day the action or inaction continues after notice of violation shall be considered a separate violation and may be assessed a separate penalty.
 - (ii) Where the violator refuses to restore a damaged area or fails to restore it as requested by the LPO or authorized DCM staff. If appropriate, a court order shall be sought to require the proper restoration.
- (F) Assessments against agents or contractors. An agent or contractor judged to be solely responsible for a violation shall bear the full cost of the assessment. If an agent or contractor is only partly responsible for a violation, he may be required to pay a portion of the assessment. If the element of willfulness referenced in Subparagraph (f)(5)(E) of this Rule is present solely on the part of the agent or contractor the doubled portion of the civil penalty assessed pursuant to that Subparagraph shall be assessed against the contractor, provided that the party primarily responsible for the violation shall be assessed the base penalty in accordance with the criteria set out in this Rule.

SCHEDULE A

Size of Violation (sq.ft.)

	Resource Affected	11,001-15,000
1.	Primary nursery area	<u>\$ 2,500</u>
2.	Submergent native vegetation	<u>\$ 2,500</u>
3.	S. alterniflora regularly flooded	1,500
4.	S. alterniflora (irregularly flooded) Juncus	1,250

PROPOSED RULES

roemer- anus		
15,001-	20,000	\$
20,000	25,000	> 25,000
<u>2,500</u>	<u>2,500</u>	<u>2,500</u>
<u>2,500</u>	<u>2,500</u>	<u>2,500</u>
<u>2,000</u>	<u>2,500</u>	<u>2,500</u>
1,750	2,250	2,500

(g) Payment and Remission/Mitigation.

- (1) Within ~~30~~ 20 days after receipt of notification of a ~~proposal to assess, civil penalty assessment,~~ the person against whom the assessment has been proposed respondent must tender payment to the department, ~~or submit a written request that the hearing be held specifying the factual and/or legal issues in dispute, petition for a contested case hearing pursuant to G.S. 150B-23,~~ or submit in writing a request for reduction of the penalty stating the reason(s) why such a request is justified.
- (2) The director may modify the ~~proposed~~ penalty to a lower amount upon finding additional or different facts which should be or should have been considered in determining the amount of the ~~proposed assessment, penalty.~~
- (3) The director will accept and acknowledge all tenders of payment on behalf of the commission.
- (4) Requests for reduction of a penalty are solely for the purpose of allowing the assessed person to contest the reasonableness of the penalty. A reduction procedure is not the proper context in which to contest facts or raise questions of law. A request for reduction must include:
 - (A) a written statement justifying the reduction,
 - (B) an acknowledgment of a civil liability as set out ~~by~~ in the findings of fact and decision, assessment, and
 - (C) a waiver of the right to an administrative contested case hearing.
- (5) If the director determines that the reduction request raises issues of fact or questions of law, he shall ~~treat the reduction request as a request for administrative contested case hearing, advise the assessed person to submit a petition for a contested case hearing pursuant to G.S. 150B-23.~~ There is no right to appeal a reduction decision to superior court. The ~~assessed person~~ respondent should request an administrative contested case hearing

if he wishes to be able to seek review in superior court.

- (6) ~~The assessed person and the department will have the opportunity to present oral arguments to the commission in support of or opposition to the reduction. If the director denies a reduction request, the respondent may request review of that decision by the commission.~~ The arguments to the commission shall be limited to the reasons stated in the written request for reduction. ~~If the assessed person raises new issues for the first time in arguments before the commission, the commission, in its discretion, shall disregard such arguments or shall order an administrative contested case hearing to be held to fully develop the new issues.~~
- (h) Hearings and Final Assessment.
 - (1) ~~The commission may delegate the power to conduct a hearing on its behalf to any member of the commission, or to any qualified employee of the department. Any person to whom such a delegation of power is made shall prepare for the commission a record of the hearing and the evidence and his recommendations for a decision concerning the assessment.~~
 - (2) ~~Any hearing concerning an assessment shall be conducted in accordance with the procedures set forth in G.S. 113A-126(d), and with the procedures set forth in Section .0300 of this Subchapter and in Article 3 of G.S. 150A that are not inconsistent with G.S. 113A-126(d) or with this Subsection, except no newspaper advertisements shall be required.~~
 - (3) ~~If the person against whom the assessment is proposed does not within 30 days after receipt of notification of the proposal to assess tender payment, or submit a written request that the hearing be held, or submit in writing a request for reduction of the penalty, then the commission or a duly appointed hearing officer may proceed with the hearing, grant a continuance, dismissal, or other disposition as he deems appropriate. If the hearing is conducted or a decision reached in the absence of a party, the absent party may petition the commission or the hearing officer, to reopen the case. Such a petition shall be granted only when petitioner can show that the reasons for his failure to appear were excusable and that fairness requires reopening the case. The decision by the hearing officer shall be in writing, shall be~~

served on the petitioner, and shall be made a part of the record.

(4) Final decisions in contested case hearings concerning assessments shall be made by the commission. A majority of the commission members must be present in order to make a final decision unless all parties agree to waive this requirement. Only those commission members who are present when the hearing is held or when the hearing is reported to the commission by an appointed hearing officer, as the case may be, shall be qualified to vote concerning an assessment. A final decision concerning an assessment shall be made by concurrence of a majority of those commission members who are qualified to vote and who are present at the time of the final decision. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the director on behalf of the commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the director will be reported to the commission at the next meeting. Such reports will include information on the following:

- (1) person(s) issued letter(s) of proposed assessment;
- (2) person(s) who have paid a penalty as a result of a proposed assessment, requested remission, or requested an administrative hearing;
- (3) person(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(k) Judicial Review. Any Person who has been notified of a final assessment may apply to the superior court of the county where such person resides for review of the hearing and assessment and the scope of the court's review of the commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. Chapter ~~150A.~~ 150B. If the person assessed fails to pay the amount of the final assessment to the department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the commission may specify, the commission may institute a civil action in the superior court of the county in which the person

assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. Chapter 150A. 150B.

(l) Settlements. The Coastal Resources Commission hereby delegates to the director the authority to enter into a settlement of a civil penalty appeal at any time prior to final decision in an administrative contested case hearing. Such settlements shall not require the approval of the commission and shall not be considered a final commission decision for purposes of G.S. 113A-123. Any settlement agreement proposed subsequent to a final commission decision in the contested case shall be submitted to the commission for approval.

Statutory Authority G.S. 113A-124(c);
113A-124(c)(5); 113A-126(d).

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the State Treasurer and The Local Government Commission intends to adopt regulations cited as 20 NCAC 7 .0107, .0505; and amend regulations cited as 20 NCAC 7 .0102 - .0103, .0105 - .0106, .0202, .0304, .0501 -.0502, .0504.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 11, 1988 at Conference Room, Room 100, 325 North Salisbury St., Raleigh, NC.

Comment Procedures: A written copy of the comments will be required of all persons wishing to speak at the public hearing. The hearing record will remain open for written comments from April 4, 1988 to May 4, 1988. Written comments should be sent to the APA Coordinator, 325 North Salisbury St., Raleigh, NC.

CHAPTER 7 - COLLATERALIZATION OF DEPOSITS

SECTION .0100 - GENERAL

.0102 DEFINITION OF TERMS

The words and phrases defined in this Rule will have the meanings indicated when used in this

Chapter, unless the context clearly requires another meaning:

- (4) "Deposit Insurance" means the insurance provided by the Federal Deposit Insurance Corporation, and the Federal Savings and Loan Insurance Corporation. ~~and the North Carolina Savings Guaranty Corporation.~~

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

.0103 NOTIFICATION BY DEPOSITOR

(b) As of ~~December 31~~ June 30 of each year, or when requested by the State Treasurer, the custodian shall provide the depository Form INV-91 "Public Deposit Status Report", listing the current account names and numbers of all public deposit accounts, and shall provide a duplicate copy to the State Treasurer. Form INV-91 shall be certified by the custodian that the statements are correct.

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

.0105 METHOD OF EXERCISING THE OPTION

(b) If the depository selects Option 2, it shall: ~~file Form INV-92 "Election of Option 2" with the custodian and the State Treasurer for each custodian, notifying them that it has opted to pool the collateral of all public deposits through the State Treasurer.~~

- (1) Submit to the State Treasurer a letter of intent, indicating the date it intends to elect Option 2, which shall not be prior to the date the requirements of Items 2, 3, and 4 of this Paragraph are met.
- (2) Submit to the State Treasurer all executed escrow agreements required to comply with Rule .0303(b).
- (3) Submit to the State Treasurer Form INV-99, "Selected Financial Data," referred to in Rule .0501(c).
- (4) Submit to the State Treasurer Form INV-97, "Annual Report on Public Deposits" referred to in Rule .0502(c); however, the report shall be for the period immediately preceding the date of the election of Option 2.
- (5) Submit to each custodian Form INV-92, "Election of Option 2," notifying them that it has opted to pool the collateral of all public deposits through the State Treasurer; and provide the State Treasurer a duplicate copy of all "Election of Option 2" forms.

Statutory Authority G. S. 115C-444(b); 147.79; 159-31(b).

.0106 FORMS

The following forms shall be promulgated by the State Treasurer and shall be used for the purpose outlined in this Chapter unless specific permission is given to use a substitute:

- (9) INV-99 Selected Financial Data.

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

.0107 DUTY OF DEPOSITORY

By accepting public deposits, the depository assumes the duty and responsibility of maintaining adequate collateral as provided by law and in accordance with the provisions of this Chapter, for all uninsured deposits in accounts for which the custodian has notified the depository pursuant to Rule .0103 of this Chapter.

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

SECTION .0200 - SECURITIES TO BE DEPOSITED

.0202 AMOUNT OF COLLATERAL REQUIRED TO BE PLEDGED

(a) Under Option 1, each depository, which is required to pledge collateral to secure the deposit of public moneys, shall maintain collateral with an escrow agent equal to or in excess of 100 percent of the total amount of all deposits to the credit of the custodian less the allowable credit for deposit insurance.

(b) Under Option 2, the amount of required collateral shall be the sum of the amounts required to be collateralized for all depositors in the financial institution calculated as follows:

- (1) Demand Deposits. 100 percent of the average daily balance for the calendar year to date, or 100 percent of the average daily balance for the immediate preceding three calendar month period, or 100 percent of the average daily balance for the current month to date, or such other balance as shall be given prior approval by the State Treasurer, less the applicable deposit insurance for each depositor. Calculations ~~on any day other than the last day of the month for any period other than the "current month to date" method~~ may be based on the period ending the last day of the prior month. At the option of the State Treasurer, the Treasurer may require calculations to be in accordance with the

requirements of an Option 1 depository, if it is deemed that the averaging method for a particular depository does not accurately reflect the amount of deposits to be secured.

(2) Time Deposits. 100 percent of the actual current balance, less the applicable deposit insurance for each depositor.

(c) The maximum amounts of deposit insurance which may be accepted shall be one hundred thousand dollars (\$100,000) on demand deposits and one hundred thousand dollars (\$100,000) on time deposits. An unused amount of insurance may not be applied to another custodian or to another type of deposit. The deposits in the name of the individual school treasurers shall be allowed one hundred thousand dollars (\$100,000) total insurance on both time and demand deposits.

(d) All eligible securities pledged shall be valued at ~~par~~ current market.

(e) The custodian in the case of public deposits separately collateralized and the State Treasurer may require additional the amount of collateral to be pledged by the depository to be ten percent greater than the amount required under this Rule, if the market value of pledged securities is below the amount reasonably required to insure public deposits against the risks apparent at the time of the request.

Statutory Authority G. S. 115C-444(b); 147-79; 159-31(b).

SECTION .0300 - ESCROW OF SECURITIES

.0304 PLEDGING; RELEASING AND SUBSTITUTING COLLATERAL

(a) All pledges and releases of collateral to or from an escrow account shall be carried out by means of Form INV-95 "Request for Collateral Change". The form shall require the following:

- (1) Amount and description (including Cusip numbers) of securities to be released and pledged;
- (2) The effect of the transaction(s) on the total collateral pledged, including the percentage of excess then pledged, if a decrease;

Statutory Authority G. S. 115C-444(b); 147-79; 159-31(b).

SECTION .0500 - REPORTING

.0501 QUARTERLY REPORTING

(a) In the case of Option 1, each depository shall report to the custodian the total par value and market value of securities pledged on the last day of the calendar quarter with the escrow

agent(s) to secure public deposits. The report shall be submitted no later than the last day of the following month.

(b) In the case of Option 2, each depository shall submit Form INV-96 "Quarterly Report on Public Deposits" to the State Treasurer no later than the last day of the month following the end of the calendar quarter. The report shall be dated on the last working day of the calendar quarter, shall summarize the accounts to be secured, shall summarize the amounts insured and secured at market, shall indicate the amount and percentage of excess collateral pledged, and shall be certified by an authorized officer of the depository that the statements are correct.

(c) In addition to the Quarterly Report required by Rule .0501(b) in this Rule, Option 2 institutions shall submit to the State Treasurer Form INV-99 "Selected Financial Data," which is a report containing selected financial data contained in either the current quarterly report of condition required by the Federal Deposit Insurance Act (12 U.S.C.) or the current quarterly report required to be filed with the Federal Home Loan Bank Board, as applicable.

Statutory Authority G. S. 115C-444(b); 147-79; 159-31(b).

.0502 ANNUAL REPORTING

(a) In the case of Option 1, on or before July 31 of each year, the depository shall submit to the custodian, Form INV-98.

(b) In the case of Option 2, on or before July 31 of each year, each depository shall submit to the State Treasurer, Forms INV-97 and INV-98 in addition to with the quarterly report (INV-96) dated June 30.

(c) Form INV-97 "Annual Report on Public Deposits" shall be dated June 30, shall list all depositors, and for each depositor, show the amounts on deposit by type, identify the amounts insured by type, and shall be certified by an authorized officer of the depository that the statements are correct.

(d) Form INV-98 "Annual Report on Collateral for Public Deposits" shall be dated June 30, shall list and describe all collateral pledged (including CUSIP number par and market value), with each escrow agent for the custodian or State Treasurer, and shall be certified by an authorized officer of the depository that the statements are correct.

(e) The depository may substitute his own format for Form INV-97 and Form INV-98, provided the format is substantially the same in content and order of presentation.

PROPOSED RULES

Statutory Authority G. S. 115C-444(b); 147-79; 159-31(b).

.0504 SPECIAL REPORTING RULE FOR OPTION 1 DEPOSITORIES

A depository which has State funds and which has not elected Option 2 shall file the reports required in Paragraphs .0501(a), .0501(c), and .0502(a).

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

.0505 ADDITIONAL MONTHLY REPORTING REQUIREMENTS

In the case of Option 2, the State Treasurer may at any time and at his own discretion direct the depository to file a report in the same format as the Quarterly Report required by Rule .0501(b), but on a monthly basis. However, the monthly reporting directive shall be required under any one of the following circumstances:

- (1) A required report is repeatedly not filed timely.
- (2) A required report is filed with a material error.
- (3) A Quarterly Report required by Rule .0501(b) is filed indicating that "excess" collateral pledged is less than ten percent of the amount required by Rule .0202.
- (4) The depository has been notified that the State Treasurer has invoked Rule .0202(e), requiring additional collateral calculations.

Such monthly reporting directive shall be effective for a period of six months, after which time the depository may resume quarterly reporting. However, subsequent violations shall extend the period of monthly reporting as set forth in this Rule.

Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b).

TITLE 24 - INDEPENDENT AGENCIES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Housing Finance Agency intends to adopt regulations cited as 24 NCAC 1K .0601 - .0605.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 9:00 a.m. on May 4, 1988 at North Carolina Housing Finance Agency, Board Room, 3300 Drake Circle, Suite 200, Raleigh, North Carolina 27607.

Comment Procedures: Written comments concerning these rules must be submitted by May 4, 1988 to the APA Coordinator, North Carolina Housing Finance Agency, Post Office Box 28066, Raleigh, N.C. 27611. Oral comments may be presented at the hearing.

CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

SUBCHAPTER 1K - MULTIFAMILY UNSUBSIDIZED RENTAL PROGRAM

SECTION .0600 - CATALYST PROGRAM FOR NOT-FOR-PROFIT ORGANIZATIONS

.0601 GENERAL INFORMATION

(a) The Rules of this Subchapter apply to the administration of the Catalyst Program for not-for-profit organizations initiated by the agency to encourage the production of low-income rental housing under the Low-Income Housing Credit program and other programs for low-income rental housing.

(b) Eligible not for profit organizations are those that meet the requirements described in paragraph (3) or (4) of section 501(c) of the Internal Revenue Code, are exempt from tax under section 501(a) of the Internal Revenue Code, and have as one of the exempt purposes of the organization the fostering of low-income housing.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0602 OBJECTIVES

The purpose of the program is to promote the development of low-income rental housing by encouraging the use of the Low Income Housing Credit program and other innovative programs by not-for-profit organizations and, to avoid the loss of federal low-income housing tax credits allocated to the state.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0603 TYPES OF ASSISTANCE

Program funds will be provided as grants or deferred payment loans, amortizing or nonamortizing, with extended loan terms. Loans will be secured by the low-income housing project. Interest, if any, will accrue annually at a rate established by the agency, depending on the needs of each individual project. Program funds will be used for one or more of the following:

- (1) Predevelopment costs;
- (2) Construction cost overruns;

- (3) Initial rent-up expenses;
- (4) Rent subsidies;
- (5) Finance expenses; and
- (6) Other expenses that ensure project feasibility.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0604 REQUIREMENTS

- (a) Program eligibility will be restricted to not-for-profit organizations which are the principal sponsors of a low-income, rental housing project.
- (b) Program funds will be restricted to projects containing low-income housing units that are either newly constructed or acquired and substantially rehabilitated. Low-income units are those that are both income qualified, occupied by individuals whose income is 50 or 60 percent of the area median income, and affordable, with rents and utility allowance not exceeding 30 percent of the eligible low-income household's gross income.
- (c) Projects must respond to local market demand and must show financial participation by a unit of local government.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0605 PROCEDURES

- (a) Program funds will be advertised statewide unless the agency determines that because of inadequate response, these targeting restrictions shall be waived.
 - (1) Each county will be limited to one funded project by September 30, 1988.
 - (2) Each metropolitan statistical area will be limited to three funded projects by September 30, 1988.
 - (3) Projects will be funded on a first-come, first-served basis until 50 percent of initial set-aside is committed; subsequently, projects will be pooled at regular intervals and ranked according to project feasibility, local need and the ability of the agency to achieve an equitable geographic distribution.
- (b) The program will require the completion and submission of these documents:
 - (1) An application prescribed by the agency;
 - (2) A letter of intent from a unit of government to provide supplementary financing; and

- (3) A letter of interest from investors or intermediaries concerning investment in the tax credits.

These requirements will be described in greater detail in the application materials developed by the agency.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Housing Finance Agency/North Carolina Housing Partnership intends to adopt the regulation cited as 24 NCAC 1M .0001.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 4, 1988 at North Carolina Housing Finance Agency/North Carolina Housing Partnership, 3300 Drake Circle, Suite 200, Raleigh, North Carolina 27607.

Comment Procedures: Written comments concerning this rule must be submitted by May 4, 1988 to the APA Coordinator, North Carolina Housing Partnership, Post Office Box 26147, Raleigh, N.C. 27611. Oral comments may be presented at the hearing.

SUBCHAPTER 1M - NORTH CAROLINA HOUSING TRUST FUND

.0001 ADOPTION OF CHAPTER 122E BY REFERENCE

- (a) The North Carolina Housing Trust and Oil Overcharge Act, Chapter 122E of the General Statutes, and future amendments to the act are adopted by reference under G.S. 150B-14(c). The act establishes overall policy guidelines for the administration of the Housing Trust Fund.
- (b) Copies of Chapter 122E may be obtained at the North Carolina Housing Finance Agency office, 3300 Drake Circle, Suite 200, Raleigh, North Carolina or by writing to the agency at Post Office Box 28066, Raleigh, North Carolina 27611.

Statutory Authority G.S. 122E-4; 122E-5; 122E-8.

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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 of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

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, Board of
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 of
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
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
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37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
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44	Osteopathic Examination and Registration, Board of
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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, Board of
58	Real Estate Commission
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CUMULATIVE INDEX
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NOW AVAILABLE

NORTH CAROLINA ADMINISTRATIVE CODE

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3	2	25 - 52	Agriculture	75.00		
4	3	1 - 4	Auditor	10.00		
5	4	1 - 2	Commerce (includes ABC)	45.00		
6	4	3 - 16	Commerce	90.00		
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