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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDERS

FINAL DECISION LETTER

PROPOSED RULES

**Economic and Community
Development**

**Environment, Health, and
Natural Resources**

Human Resources

Insurance

Medical Examiners

Pharmacy, Board of

FINAL RULES

Revenue

List of Rules Codified

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-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 fifty 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 one hundred and five dollars (\$105.00) for 24 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 (\$0.15) 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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ISSUE CONTENTS

I. EXECUTIVE ORDERS
Executive Orders 101-102.....1021

II. FINAL DECISION LETTER
Voting Rights Act.....1022

III. PROPOSED RULES

Economic and Community Development
Banking Commission1023
Credit Union1026

Environment, Health, and Natural Resources
Coastal Management.....1078
Environmental Management.....1072

Human Resources
Division of Economic Opportunity1070
Employment Programs1062
Facility Services.....1029
Individual and Family Support1063
Medical Assistance1068
Services for the Blind1067

Insurance
Engineering and Building Codes.....1071

Licensing Boards
Board of Medical Examiners1081
Board of Pharmacy.....1087

IV. FINAL RULES
Revenue
Motor Fuels Tax Division.....1093
List of Rules Codified1097

VI. CUMULATIVE INDEX.....1102

NORTH CAROLINA REGISTER
Publication Schedule
 (January 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
01/16/90	12/20/89	12/29/89	02/15/90	05/01/90
02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
07/16/90	06/22/90	06/29/90	08/15/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
08/15/90	07/25/90	08/01/90	09/14/90	12/01/90
09/04/90	08/13/90	08/20/90	10/04/90	01/01/91
09/14/90	08/24/90	08/31/90	10/14/90	01/01/91
10/01/90	09/10/90	09/17/90	10/31/90	02/01/91
10/15/90	09/25/90	10/02/90	11/14/90	02/01/91
11/01/90	10/11/90	10/18/90	11/30/90	03/01/91
11/15/90	10/24/90	10/31/90	12/14/90	03/01/91
12/03/90	11/08/90	11/15/90	01/02/91	04/01/91
12/14/90	11/21/90	11/30/90	01/13/91	04/01/91
01/02/91	12/07/90	12/14/90	02/01/91	05/01/91
02/01/91	01/10/91	01/18/91	03/03/91	06/01/91
03/01/91	02/08/91	02/15/91	03/31/91	07/01/91
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08/01/91	07/11/91	07/18/91	08/31/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

* 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 ORDERS

EXECUTIVE ORDER NUMBER 101

**AMENDING EXECUTIVE ORDER NUMBER 55
EXTENDING EXPIRATION DATE OF
EXECUTIVE ORDER NUMBER 55**

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

The Martin Luther King, Jr. Holiday Commission, established by Executive Order Number 55, on September 30, 1987, is hereby extended, effective September 30, 1989, through September 30, 1991.

Done in Raleigh, North Carolina this the 21st day of December, 1989.

EXECUTIVE ORDER NUMBER 102

**AMENDMENT TO EXECUTIVE ORDER
NUMBER 88
COLUMBUS VOYAGES QUINCENTENARY
COMMISSION**

Whereas, on May 8, 1989, I established the Columbus Voyages Quincentenary Commission under the Department of Administration by issuing Executive Order Number 88; and

Whereas, I desire to transfer the Columbus Voyages Quincentenary Commission from the Department of Administration to the Department of Cultural Resources;

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

Executive Order Number 88 is amended as follows:

Section (a) of Executive Order Number 88 entitled "Columbus Voyages Quincentenary Commission" is amended by transferring the establishment of the Commission from the Department of Administration to the Department of Cultural Resources.

Section (d) of Executive Order Number 88 is amended in part to read, "Administrative support for this Commission shall be provided by the Department of Cultural Resources."

Section (e) of Executive Order Number 88 is amended in part to read, "Funds for reimbursement of such expenses shall be made available from funds authorized to the Department of Cultural Resources for such purposes."

Done in Raleigh, North Carolina, this the 21st day of December 1989.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.911, 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

Office of the Assistant Attorney General

Washington, D.C. 20530

January 8, 1990

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

Dear Mr. Crowell:

This refers to our letter of December 4, 1989, interposing a provisional objection, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 195, H.B. 595 (1989), which allows, until August 1, 1990, the board of commissioners to change its method of election without holding a referendum election and permits the adoption of specified additional election features, and the June 26, 1989, Resolution of the board of commissioners, which implements Chapter 195 (1989) to provide for an increase in the number of commissioners from five to seven; a change in the method of election from at large by majority vote and staggered terms (3-2) to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms (4-3), with the three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary for Lee County, North Carolina.

As promised in the December 4, 1989, letter, we have now completed our analysis of the proposed changes. In doing so, we have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. As a result, we find no basis for continuing the objection to the changes involved in Chapter 195 (1989) or to the proposed method of election changes, districting plan, and related changes involved in the June 26, 1989, Resolution. Accordingly, the objection is hereby withdrawn. 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,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Banking Commission intends to amend rule(s) cited as 4 NCAC 3A .0101; 3C .0701 - .0703, .1302, .1401 - .1402; repeal rule(s) cited as 4 NCAC 3C .0501 - .0502, .0704 - .0705; and adopt rule(s) cited as 4 NCAC 3C .0503, .1601.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 13, 1990 at North Carolina Banking Commission, Dobbs Building - 6th Floor (Room 6210), 430 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Comments must be submitted in writing not later than Thursday, March 8, 1990. Written comments should be directed to:

*L. McNeil Chestnut
General Counsel
North Carolina Banking Commission
Post Office Box 29512
Raleigh, North Carolina 27626-0512*

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

.0101 NAME: LOCATION AND ADDRESS

The office of the North Carolina Banking Commission is located at Room ~~625~~ 6210, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The mailing address for the Banking Commission and all of its officers and employees is P.O. Box ~~951~~ 29512, Raleigh, North Carolina ~~27602~~ 27626-0512. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m.

Statutory Authority G.S. 53-92; 150B-10.

SUBCHAPTER 3C - BANKS

SECTION .0500 - WORK WEEK

.0501 OPERATION OF BANKS ON A FIVE-DAY WEEK BASIS (REPEALED)

.0502 BANKS REVERTING TO A SIX-DAY WEEK BASIS (REPEALED)

Statutory Authority G.S. 53-77.1; 53-92; 150B-11(1).

.0503 DAYS AND HOURS OF REGULAR OPERATION

On request state and national banks shall file with the Commissioner a schedule of the days and hours of regular operation for the bank and each of its branches and limited service facilities.

Statutory Authority G.S. 53-77.1A(d); 53-92; 150B-11(1).

SECTION .0700 - REPORTS REQUIRED BY COMMISSIONER OF BANKS

.0701 EXAMINING COMMITTEE REPORT

Form 7 is a report reflecting the results of a required annual examination of a state bank conducted by an examining committee appointed by the bank's board of directors. It contains a balance sheet and a questionnaire covering various statutory and regulatory requirements. ~~Form 7 is required to be filed annually and is due not later than June 30 for the preceding year.~~ The form may be obtained from and should be filed with:

The Commissioner of Banks
P.O. Box ~~951~~ 29512
Raleigh, North Carolina ~~27602~~ 27626-0512.

Statutory Authority G.S. 53-83; 53-92; 53-99; 150B-11(1).

.0702 REPORTS OF CONDITION AND INCOME

Every state bank shall submit a report of condition and income to the Commissioner of Banks ~~as of such dates as he shall specify, but in no later event less than three times a year and according to such form as he shall prescribe. 30 days after the end of each calendar quarter. Such reports shall be submitted on Form 64. That form contains a balance sheet as well as a detailed breakdown of the major asset and liability categories, and must be submitted within 10 days of the receipt of the request therefor. Upon written request the commissioner may extend the time period for up to 30 days if in his judgment such extension is necessary.~~ The report of condition and income form can be obtained from and should be submitted to:

The Commissioner of Banks
P.O. Box ~~951~~ 29512
Raleigh, North Carolina ~~27602~~ 27626-0512.

Statutory Authority G.S. 53-92; 53-105; 150B-11(1).

.0703 PUBLISHER'S COPY, REPORT OF CONDITION AND INCOME

Every state bank shall submit along with each report of condition and income a summary of such the report designed for publication. Such publisher's copy is required to be which has been published in a newspaper of general circulation published in the place where the bank is located. ~~or if there is no newspaper published or circulated in the place where the bank is located, then in the report summary must be published in a newspaper of general circulation nearest one published thereto in the county in which such the bank is established.~~ Proof of such publication shall be furnished the Commissioner of Banks in such the form as may be prescribed by him. of a certificate or affidavit of publication. Such summary shall be submitted on Form 61p. That form contains a balance sheet and a publisher's certificate. The A form can be obtained from and should be submitted to:

The Commissioner of Banks
P.O. Box ~~954~~ 29512

Raleigh, North Carolina ~~27602~~, 27626-0512.

Statutory Authority G.S. 53-92; 53-105; 150B-11(1).

.0704 CONSOLIDATED REPORT OF INCOME (REPEALED)

.0705 REPORT OF MANAGEMENT AND PERSONNEL (REPEALED)

Statutory Authority G.S. 53-92; 53-106; 53-107; 150B-11(1).

SECTION .1300 - BANK PERSONNEL

.1302 SHARE PURCHASE AND OPTION PLANS

A state-chartered bank may grant options to purchase, sell, or enter into agreements to sell, shares of its capital stock to its officers and employees establish:

- (1) stock option plans for the benefit of its directors, officers, employees, or any of these groups, and
- (2) stock purchase plans for the benefit of officers and employees provided the following conditions are met:
 - (4) Application for approval shall be made to the Commissioner of Banks in the form of a letter containing the following information:
 - (a) description of all material provisions of the plan;
 - (b) proposed notice of shareholders' meeting proxy and proxy statement;

- (e) number of shares of authorized but unissued stock to be allocated to the plan;
- (d) proposed amendments to articles of incorporation creating authorized but unissued stock and eliminating preemptive rights as to shares reserved under the plan.
- (a) The bank must submit a written request to the Commissioner which includes or incorporates by reference the following information:
 - (i) A draft of the plan document,
 - (ii) A copy of the proposed notice of shareholders' meeting, proxy, and proxy statement,
 - (iii) The number of authorized but unissued shares that will be allocated to the plan,
 - (iv) A copy of any proposed amendments to the Articles of Incorporation creating authorized but unissued stock and eliminating pre-emptive rights as to shares reserved under a stock option or stock purchase plan, and
 - (v) The number of shares of stock outstanding at the time the request is made and the number of shares which have previously been allocated to any stock option or stock purchase plan.
- (b) ~~(2)~~ Plan Except for stock option plans for directors, the plan is administered by a committee, none of whose members may participate in the plan.
- (c) ~~(3)~~ The number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank.
- (d) ~~(4)~~ In the case of a stock option plan, the number of shares subject to the plan is ~~not unreasonable~~ reasonable in relation to the bank's capital structure and anticipated growth.
- (e) ~~(5)~~ Shares issued to employees and officers under this Regulation may be authorized but unissued stock which has been authorized by stockholders in accordance with proper notification of shareholders.
- (6) The increase in capital represented by stock certificates issued pursuant to G.S. 53-13.3 will not be applicable, however, for the purposes of permitted investment in banking premises, lending limits, branches, and like purposes, until a notarized notice specifying the amount paid into the bank therefor, shall be executed by an executive officer of the bank and filed with the commissioner and until the commissioner approves thereof and acknowledges that such sums have been

PROPOSED RULES

~~duly paid in as part of the capital of the bank.~~

- (f) Stock allocated or reserved for a stock option plan or a stock purchase plan may not be included in computing the bank's investment limitation, loan limitation, fixed asset limitation, or any other limitation based on capital, until the stock has been paid for in full.

Statutory Authority G.S. 53-10; 53-43; 53-43.3; 53-92; 53-104; 150B-11(1).

SECTION .1400 - LEGAL RESERVE

.1401 REQUIREMENT OF RESERVE FUND

(a) The amount of the reserve fund which shall be established and maintained shall at all times equal ~~100 percent of the total~~ reserves required by the Federal Reserve System for non-member banks. ~~with no reduction for any transitional adjustments which may be permitted by federal law or regulation.~~

(b) In the event the reservable liabilities of any bank are such that no reserve is required of that bank by the Federal Reserve System, such bank shall maintain a reserve fund equal to three percent of its total deposits of every kind which are not secured by a deposit of bonds, notes, bills, and certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, or the bond obligations of the State of North Carolina, its counties, municipalities, and other political subdivisions thereof.

Statutory Authority G.S. 53-50; 53-92; 53-104; 150B-11(1).

.1402 BASIS FOR COMPUTATION AND MAINTENANCE

Required reserves shall be computed on the basis of the daily average deposit balance during a ~~seven-day~~ 14-day period ending ~~each Wednesday every second Monday~~ (the "computation period"). The method for determining the amount of reserve required is set forth in Rule .1401 of this Section. The reserves that are required to be maintained shall be maintained during a corresponding ~~seven-day~~ 14-day period (the "maintenance period") which begins on the second Thursday following the end of a given computation period and ends on the second Wednesday thereafter. For non-business days deposit figures of the prior banking day will be used.

Statutory Authority G.S. 53-50; 53-92; 53-104; 150B-11(1).

SECTION .1600 - FEES

.1601 FEES, COPIES AND PUBLICATION COSTS

(a) For applications, petitions, and other proceedings which must be filed with the Commissioner of Banks the following fees shall be paid to the Commissioner at the time of filing:

- (1) Application for the Formation of a New Bank \$ 10,000.00
- (2) Application for Authority to Decrease Capital Stock \$ 250.00
- (3) Application to Merge or Consolidate Banks (fee is per bank) \$ 4,000.00
- (4) Application for Reorganization Into a Bank Holding Company Through an Interim Bank (fee is per bank) \$ 4,000.00
- (5) Application for Reorganization \$ 4,000.00
- (6) Application for Conversion of a National Bank to State Charter \$ 5,000.00
- (7) Application for Voluntary Liquidation \$ 3,000.00
- (8) Application for Authority to Create and Invest in a Subsidiary \$ 750.00
- (9) Application for Approval of Change in Bank Control or Management \$ 1,000.00
- (10) Petition for Authority to Exceed Investment or Loan Limitations \$ 250.00
- (11) Application for Authority to Establish a Branch Bank \$ 1,000.00
- (12) Application for Authority to Relocate a Main Office or Branch \$750.00
- (13) Application for Authority to Create a Limited Service Facility \$ 1,000.00
- (14) Application for Authority to Convert a Branch to a Limited Service Facility \$ 500.00
- (15) Authority to Close a Branch \$ 1,000.00
- (16) Request for Replacement Charter Certificate \$25.00
- (17) Request for Certificate of Good Standing \$25.00

(b) The fees set forth in Paragraph (a) of this Rule are for standard applications, petitions, and

PROPOSED RULES

other proceedings filed and considered in the ordinary course of business. Any application, petition or other proceeding which in the opinion of the Commissioner of Banks requires extraordinary review, investigation or special examination will be subject to additional expenses at an hourly rate to be determined annually by the Banking Commission. The Commissioner of Banks will advise an applicant or petitioner in advance of any additional work required and the hourly rate for the same.

(c) Publications available through the Banking Commission and copies of public records may be obtained at the following costs.

(1) Publications:

- (A) Consumer Finance Laws of North Carolina 1988 Edition (Includes Consumer Finance Act, Retail Installment Sales Act, and Interest Rate Laws) \$ 8.00
(B) Laws of NC Relating to Banks and Savings and Loans (Including the latest Cumulative Supplement) \$ 15.00
(C) The Cumulative Supplement (individually) \$ 8.00
(D) Annual Report of Consumer Finance Licensees \$ 4.00
(E) Annual Report of State-chartered Banks \$ 5.00
(F) Annual Report of Special Services \$ 3.50
(G) North Carolina Administrative Code - Chapter 3 Banking Commission and Related Regulations \$ 7.50
(H) Annual Subscription for Official Notice-Maximum Rate of Interest Allowed on Certain Loans \$ 10.00

(2) Copies of public records: one dollar (\$1.00) per page.

(d) Any new publication or any publication not set forth in Subparagraph (c)(1) of this Rule may be purchased at a price of five cents (\$.05) per page.

Statutory Authority G.S. 53-92; 53-122(1); 150B-11(1).

Notice is hereby given in accordance with G.S. 150B-12 that the ECD, Credit Union Division intends to repeal rule(s) cited as 4 NCAC 6B .0101, .0105, .0201 - .0206; 6C .0701 - .0705; and adopt

rule(s) cited as 4 NCAC 6B .0301 - .0303, .0401 - .0402, .0501 - .0509.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 5, 1990 at Room 4009, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Stanley W. Brown, Jr., Credit Union Division, 430 North Salisbury Street, Raleigh, North Carolina (919) 733-7501.

CHAPTER 6 - CREDIT UNION

SUBCHAPTER 6B - RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 - RULE-MAKING AND DECLARATORY RULINGS

.0101 PETITIONS (REPEALED)

Statutory Authority G.S. 54-109.12; 150B-16.

.0105 DECLARATORY RULINGS (REPEALED)

Statutory Authority G.S. 54-109.12; 150B-17.

SECTION .0200 - CONTESTED CASES (REPEALED)

- .0201 REQUEST FOR HEARING
.0202 GRANTING OR DENYING HEARING REQUESTS
.0203 NOTICE OF HEARING
.0204 WHO SHALL HEAR CONTESTED CASES
.0205 PETITION FOR INTERVENTION
.0206 TYPES OF INTERVENTION

Statutory Authority G.S. 1A-1, Rule 24; 54-109.12; 150B-23; 150B-38; 150B-40.

SECTION .0300 - RULE-MAKING HEARINGS

.0301 PETITION FOR ADOPTION: AMENDMENT OR REPEAL OF RULES

(a) Right to Petition. Any interested person may petition the Administrator to promulgate, amend, or repeal an administrative rule.

(b) Form of Petition. The petition shall be in writing, signed by the petitioning party or parties and must include the address of the petitioning party. In addition, the petition shall contain the following information:

- (1) a draft of the proposed rule, amendment or repeal or a summary thereof;
- (2) the reason(s) for the proposal;
- (3) the effect on existing rules or orders or both;
- (4) any data showing the probable effect of the proposal on existing practices in the area involved, including cost; and
- (5) the names of those most likely to be affected by the proposal with addresses if reasonably known.

(c) Address for Petition. Petitions shall be addressed to the Division at its mailing address.

(d) Disposition of Petition. Upon receipt of a petition, the Administrator will make a study of the facts stated in the petition and any additional information he deems relevant. The Administrator's disposition of the petition will be made in one of the following forms within 30 days of receipt of the petition:

- (1) a written denial of the proposal setting forth the reasons for such denial, or
- (2) a written communication to the petitioner indicating the Administrator's plan to initiate rulemaking procedures pursuant to G.S. 150B-12.

Statutory Authority G.S. 54-109.12; 150B-12.

.0302 NOTICE OF RULE-MAKING HEARINGS

Any person or agency desiring to be placed on the mailing list for the Administrator's rule-making notices may file such request by furnishing a name and mailing address in writing to the Division at its mailing address. The request must state the subject areas within the authority of the Administrator's office for which the notice is requested. The Administrator may require reasonable postage and stationery costs to be paid by persons receiving such notices.

Statutory Authority G.S. 150B-12.

.0303 RULE-MAKING HEARINGS: GENERAL INFORMATION

The hearing officer shall have complete control of the proceedings, including extensions of any time requirements, order of presentations, time allotments for presentations, direction of the flow of the discussion and the management of the hearing. Each person participating in the hearing shall be given a fair opportunity to present views, data, and comments.

Statutory Authority G.S. 150B-12.

SECTION .0400 - DECLARATORY RULINGS

.0401 PETITION FOR DECLARATORY RULING

(a) Petitioner Must Possess Interest. The petitioner must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, Division rules, or Division policy shall be apparent from the petition and shall be fully explained therein.

(b) Form and Content of Petition. The petition shall be typewritten and shall contain the name and address of the petitioner, the specific factual situation involved, the question or questions sought to be answered, and the identification of the rules, statutes, or orders applicable to the question presented.

(c) Written Brief May Be Submitted. The petitioner may submit a written brief, but oral argument shall not be allowed unless deemed necessary by the Administrator.

(d) Mailing Address. All requests for declaratory rulings shall be mailed to the Division at its mailing address.

Statutory Authority G.S. 54-109.12; 150B-17.

.0402 RESPONSE OF ADMINISTRATOR TO PETITION

(a) Written Response. A written response to the petition for a declaratory ruling, whether in the form of a declaratory ruling or a refusal to issue a declaratory ruling, shall be signed by the Administrator or his designated representative within 60 days following the date on which the petition was received by the Division.

(b) Refusal of Issue Declaratory Ruling. The Administrator may refuse to issue a declaratory ruling if one of the following circumstances exists:

- (1) The subject matter is one in which the Administrator has no authority to issue a binding decision;
- (2) The situation is one in which the amount of work that would be required by the Administrator and staff to issue the declaratory ruling would be the same as or greater than the work required to process the request through normal procedures or a contested case proceeding;
- (3) The petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the Administrator cannot determine what the question is, or that the

Administrator cannot respond with a specific ruling that will be binding on all parties;

- (4) The petitioner does not, in the opinion of the Administrator, possess sufficient interest in the question to be ruled on; or
- (5) For any other reason the Administrator finds the issuance of a declaratory ruling to be undesirable.

Statutory Authority G.S. 150B-17.

SECTION .0500 - ADMINISTRATIVE HEARINGS

.0501 RIGHT TO HEARING

Whenever the Administrator acts in such a way as to affect the rights, duties or privileges of a specific identified party, the party may appeal for a final decision by the Administrator in accordance with Article 3A of G.S. 150B.

Statutory Authority G.S. 150B-38.

.0502 INFORMAL SETTLEMENT

(a) Attendance at Settlement Conference. Before a hearing request can be acted upon, a person must first make an effort to resolve the matter with the Division informally and must attend and participate in any scheduled meetings or conferences.

(b) Settlement Statement. A proposed settlement, including a stipulated statement of facts, shall be set forth in writing by the Division. If the proposed settlement is agreed to by all parties to the matter, it shall represent the final disposition of the matter and shall be signed by all parties to the matter or their legal representatives. If the proposed settlement is not agreed to and signed by all parties, then the matter shall proceed as provided in this Section.

Statutory Authority G.S. 54-109.12.

.0503 REQUEST FOR HEARING

(a) Form of Request. A request for an administrative hearing must be in writing and must contain the following information:

- (1) name and address of the person requesting the hearing;
- (2) a concise statement of the action by the Administrator that is being challenged;
- (3) a concise statement of the manner in which the petitioner is aggrieved; and
- (4) a clear and specific demand for a public hearing.

(b) Address for Request. The request for hearing shall be filed with the Division at its mailing address.

Statutory Authority G.S. 54-109.12; 150B-38.

.0504 NOTICE OF HEARING

Notice of a public hearing shall be given in writing to the appropriate parties in advance of the hearing date as required by the law applicable to the hearing being held.

Statutory Authority G.S. 150B-38.

.0505 INTERVENTION IN AN ADMINISTRATIVE HEARING

(a) Petition to Intervene. A petition to intervene may be permitted if timely and if the petition meets the criteria set forth in G.S. 1A-1, Rule 24(b).

(b) Intervention Criteria. In addition, the Administrator, in his discretion, may allow intervention or limited intervention when:

- (1) Similar rights will be affected;
- (2) Intervention will not confuse issues;
- (3) Issues are the same or similar to the issue in question;
- (4) Intervention is in the public interest; and
- (5) Intervention will not prejudice the rights of parties.

(c) Form of Petition. A petition to intervene shall contain the name of the petitioner, the title of the hearing, the date and time of the hearing, if known, and the grounds for intervention. The petition for intervention shall be addressed to all parties affected thereby and to the Division at its mailing address.

(d) Notice of Intervention. If the Administrator allows intervention, notice of that decision shall be issued promptly to all parties and to the petitioner. Notification will include a statement of any limitation of time, subject matter, evidence, or other limitations imposed on the intervenor. If the Administrator's decision is to deny intervention, the petitioner will be notified promptly.

Statutory Authority G.S. 1A-1; 150B-38.

.0506 DEPOSITIONS

The use of depositions may be allowed only when attendance at a hearing would work a hardship on a person otherwise available to be subpoenaed as a witness, and such hardship is so great as to be unreasonable in light of the testimony that person may be expected to give. In such a case, a deposition will be taken in accordance with the North Carolina Rules of Civil Procedure. All necessary rulings as to whether a deposition will be allowed or as to methods of

securing a deposition are within the power and discretion of the hearing officer.

Statutory Authority G.S. 1A-1; 150B-39.

.0507 SUBPOENAS

(a) Hearing Officer May Issue Subpoena. Any hearing officer may issue subpoenas in the name of the Administrator.

(b) Request for Subpoena. Subpoenas requiring the attendance of witnesses, or the production of documents, evidence or things will be issued promptly by a hearing officer after receipt of a written request from a party to a contested case for such subpoena.

Statutory Authority G.S. 150B-38; 150B-39.

.0508 SERVICE OF SUBPOENAS

(a) Methods of Service. Subpoenas shall be served as the officer issuing the subpoena shall direct. Subpoenas may be directed to be served by any of the following methods:

- (1) by an employee of the Division; or
- (2) by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee.

(b) Form of Subpoena. Subpoenas will be issued in duplicate with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed.

Statutory Authority G.S. 150B-38; 150B-39.

.0509 OBJECTION TO A SUBPOENA

(a) Form of Objection. Except as may be otherwise stated in a particular subpoena, a party or person receiving a subpoena from the Division may object thereto by filing a written objection to the subpoena with the Division at its mailing address. An objection to a subpoena must include a concise but complete statement of reasons why the subpoena should be revoked or modified. These reasons may include any reason in law for holding the subpoena invalid.

(b) Service of Objection. The objection shall be served upon the Administrator and the party who requested the subpoena. Service shall be in accordance with the North Carolina Rules of Civil Procedure.

(c) Response to Objection. The party requesting the subpoena may file a written response to the objection. The response shall be served in like manner as the objection.

(d) Hearing on Subpoena. After receipt of the objection and response thereto, the hearing officer may issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify all other parties of a hearing, to be scheduled as soon as practicable, at which time evidence and testimony regarding the objection and response may be presented.

Statutory Authority G.S. 150B-38; 150B-40.

SUBCHAPTER 6C - CREDIT UNIONS

SECTION .0700 - ACCOUNTS

- .0701 GENERAL (REPEALED)
- .0702 INDIVIDUAL ACCOUNTS (REPEALED)
- .0703 JOINT ACCOUNT AGREEMENT (REPEALED)
- .0704 REVOCABLE TRUST AGREEMENT (REPEALED)
- .0705 CUSTODIAL ACCOUNT FOR MINORS (REPEALED)

Statutory Authority G.S. 54-109.12; 54-109.44(6).

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Human Resources/Social Services intends to adopt rules cited as 10 NCAC 3J .2301 - .2303, .2401 - .2404, .2501 - .2505, .2601 - .2605, .2701, .2801, .2901 - .2905, .3001, .3101 - .3105, .3201 - .3204, .3301 - .3302, .3401 - .3426, .3501 - .3506, .3701 - .3736, .3801 - .3807, .3901 - .3956; 39D .0101 - .0107; amend rules cited as 10 NCAC 42D .1407; repeal rules cited as 10 NCAC 3J .0101 - .0106, .0201 - .0205, .0301 - .0308, .0401 - .0413, .0501 - .0507, .0602 - .0609, .0701 - .0708, .0801 - .0807, .0901 - .0902, .1001 - .1002, .1101 - .1105, .1201 - .1204, .1301 - .1307, .1401 - .1419, .1501 - .1507, .1601 - .1603, .1701 - .1704, .1801 - .1802, .1901 - .1902, .2001 - .2026, .2101 - .2102, .2201 - .2206.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 5, 1990 at Disability Determination Building, 321 Chapanoke Drive, Raleigh, NC 27603.

Comment Procedures: Interested persons may present their views and comments in writing before or at the hearing, or orally at the hearing. Time

PROPOSED RULES

limits may be imposed as deemed necessary by the Commission Chairman. A fiscal note has been prepared. Any person may request information, or copies of the proposed regulations by writing or calling Donna A. Creech, Special Assistant, Social Services, 325 N. Salisbury St., Raleigh, NC 27611, 919/733-3055.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

SECTION .0100 - DEFINITIONS (REPEALED)

- .0101 COUNTY JAIL
- .0102 MUNICIPAL JAIL
- .0103 LOCAL LOCK-UP
- .0104 REGIONAL OR DISTRICT JAIL
- .0105 DETENTION FOR CHILDREN (JUVENILE DETENTION HOMES)
- .0106 TERMINOLOGY

Statutory Authority G.S. 153A-220; 153A-221; 153A-221.1.

SECTION .0200 - DESIGN DEVELOPMENT AND APPROVAL FOR NEW JAILS AND MAJOR RENOVATIONS (REPEALED)

- .0201 ARCHITECT OR ENGINEER
- .0202 CONSULTATIVE AND TECHNICAL SERVICES
- .0203 SUBMISSION OF WORKING PLANS AND SPECIFICATIONS
- .0204 APPROVAL
- .0205 COMPLIANCE WITH BUILDING CODE

Statutory Authority G.S. 108-80; 153A-220; 153A-221.

SECTION .0300 - BUILDING MATERIALS AND CONSTRUCTION REQUIREMENTS (REPEALED)

- .0301 EXTERIOR
- .0302 INTERIOR WALLS IN SECURITY
- .0303 INTERIOR FLOORS
- .0304 INTERIOR CEILINGS
- .0305 INTERIOR STEEL GRATINGS
- .0306 SAFETY VESTIBULES
- .0307 NON-COMBUSTIBLE MATERIALS
- .0308 FIRE-RESISTIVE CONSTRUCTION

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0400 - DOORS (REPEALED)

- .0401 BOOKING OR CONTROL AREA DOORS
- .0402 EXIT DOORS
- .0403 SALLY PORT DOOR
- .0404 SPEAKING PANEL AND OBSERVATION PORT

- .0405 ENTRANCE TO INSPECTION CORRIDORS
- .0406 ENTRANCE TO SECURITY AREA
- .0407 INDIVIDUAL ROOM GRILL DOORS
- .0408 PIPE CHASE ACCESS DOORS OR PLATES
- .0409 OBSERVATION PORTS AND FOOD PASSES
- .0410 OPERATING HATCH
- .0411 OVER-RIDE OPERATION
- .0412 DOOR-LOCKING MECHANISMS
- .0413 ELEVATOR DOORS

Statutory Authority G.S. 14-261; 153A-220; 153A-221; 153A-228.

SECTION .0500 - WINDOWS AND SECURITY SCREENING (REPEALED)

- .0501 CONFINEMENT AREA WINDOWS
- .0502 DETENTION SASH
- .0503 INSPECTION CORRIDOR WINDOWS
- .0504 SCREENING
- .0505 GLAZING
- .0506 SKYLIGHTS
- .0507 BOOKING AREA WINDOWS

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0600 - SINGLE ROOM REQUIREMENTS (REPEALED)

- .0601 PERCENTAGE OF TOTAL CAPACITY
- .0602 AREA
- .0603 PLUMBING
- .0604 ISOLATION ROOMS
- .0605 SHOWER
- .0606 SHELF AND CLOTHES HOOK
- .0607 MIRROR
- .0608 BUNK
- .0609 NATURAL LIGHT

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0700 - MULTIPLE ROOM REQUIREMENTS (REPEALED)

- .0701 CAPACITY
- .0702 SIZE
- .0703 PLUMBING
- .0704 SHOWER
- .0705 SHELF AND CLOTHES HOOK
- .0706 MIRROR
- .0707 BUNK
- .0708 NATURAL LIGHT

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0800 - DORMITORY AREA REQUIREMENTS (REPEALED)

- .0801 CAPACITY
- .0802 AREA
- .0803 PLUMBING

PROPOSED RULES

- .0804 SHOWER
- .0805 MIRROR
- .0806 TABLE AND BENCH
- .0807 NATURAL LIGHT

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0900 - AREAS FOR SEPARATION BY INMATE CATEGORY (REPEALED)

- .0901 FEMALES
- .0902 JUVENILES

Statutory Authority G.S. 14-261; 153A-220; 153A-221; 153A-221.1; 153A-228.

SECTION .1000 - JAIL BUNKS (REPEALED)

- .1001 STEEL BUNKS
- .1002 DOUBLE BUNKS

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1100 - DAY ROOM AND SAFETY VESTIBULE REQUIREMENTS: COUNTY JAIL (REPEALED)

- .1101 AREA
- .1102 PLUMBING
- .1103 BENCH AND TABLE
- .1104 DOUBLE DOOR
- .1105 CAPACITY

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1200 - HOLDING AREAS (REPEALED)

- .1201 AREA REQUIRED
- .1202 OBSERVATION
- .1203 CONSTRUCTION
- .1204 FURNISHINGS

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1300 - OTHER AREAS (REPEALED)

- .1301 STORAGE
- .1302 MEDICAL EXAMINING ROOM
- .1303 CONFERENCE AREAS
- .1304 INMATE VISITATION
- .1305 LAUNDRY
- .1306 MOP CLEAN-UP STATIONS
- .1307 WATER DRAINS

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1400 - SAFETY AND SECURITY REQUIREMENTS (REPEALED)

- .1401 KEYS
- .1402 SLEEPING ROOM AND DAYROOM LIGHTING FIXTURES

- .1403 CORRIDOR LIGHTING
- .1404 NIGHT LIGHTING
- .1405 NON-DOMICILIARY LIGHTING
- .1406 SECURITY FIXTURES
- .1407 HEATING EQUIPMENT
- .1408 VENTILATION
- .1409 COOLING
- .1410 SALLY PORT CONTROL
- .1411 MIRRORS
- .1412 MATTRESSES
- .1413 FIRE EXTINGUISHERS
- .1414 TRAVEL DISTANCE
- .1415 TYPE OF EXTINGUISHER
- .1416 INSPECTION OF EXTINGUISHERS
- .1417 MAINTENANCE OF EXTINGUISHERS
- .1418 FIRE ESCAPES
- .1419 SMOKE DETECTORS

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1500 - SUPERVISION (REPEALED)

- .1501 PERSONNEL
- .1502 POLICIES
- .1503 MATRON
- .1504 JUVENILES
- .1505 SEPARATION OF SEXES
- .1506 FIRE PROGRAM
- .1507 DISEASE

Statutory Authority G.S. 153A-220; 153A-221; 153A-221.1; 153A-224; 153A-228.

SECTION .1600 - SANITATION AND PERSONAL HYGIENE (REPEALED)

- .1601 BEDDING
- .1602 SHAVING
- .1603 TOWELS AND SOAP

Statutory Authority G.S. 153A-220; 153A-221; 153A-226.

SECTION .1700 - FOOD (REPEALED)

- .1701 NUMBER OF MEALS
- .1702 DIET
- .1703 FOOD RECORDS
- .1704 FOOD SANITATION

Statutory Authority G.S. 153A-221.

SECTION .1800 - MEDICAL CARE OF PRISONERS (REPEALED)

- .1801 MEDICAL PLAN
- .1802 REPORT OF DEATH

Statutory Authority G.S. 153A-221; 153A-225(a); 153A-225(b).

SECTION .1900 - TRAINING OF PERSONNEL (REPEALED)

- .1901 EMPLOYEE REQUIREMENTS
- .1902 IN-SERVICE TRAINING

Statutory Authority G.S. 153A-220; 153A-227.

**SECTION .2000 - SECURITY EQUIPMENT
(REPEALED)**

- .2001 PURPOSE
- .2002 WALLS
- .2003 SLIDING DOORS
- .2004 SWINGING DOORS
- .2005 ACCESS DOORS AND PANELS
- .2006 PRISON KEY-OPERATED LOCKS
- .2007 HINGES
- .2008 OBSERVATION AND SPEAKING
PANELS
- .2009 FOOD PASSES
- .2010 MIRRORS
- .2011 SHELF AND CLOTHES HOOKS
- .2012 JAIL BUNKS
- .2013 TABLES; BENCHES AND SEATS
- .2014 SHOWER STALLS
- .2015 REMOTE CONTROL LOCKING
MECHANISMS
- .2016 MATERIAL TESTS
- .2017 PROTECTION EQUIPMENT FOR
ELECTRIC LIGHTS
- .2018 DOOR PULLS
- .2019 WIRE WINDOW GUARDS
- .2020 SECURITY SCREENS
- .2021 INSECT SCREENS AND DOORS
- .2022 KEY CABINET
- .2023 PLUMBING
- .2024 PLUMBING FIXTURES
- .2025 FLOOR DRAINS
- .2026 GENERAL PROVISIONS REGARDING
EQUIPMENT INSTALLATION

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .2100 - REPORTS (REPEALED)

- .2101 MONTHLY REPORT OF LOCAL
CONFINEMENT FACILITIES
- .2102 MUNICIPAL CONFINEMENT FACILITY
MONTHLY REPORT

Statutory Authority G.S. 153A-220; 153A-221.

**SECTION .2200 - SPECIAL REQUIREMENTS
FOR HOLDOVER FACILITIES (REPEALED)**

- .2201 HOLDOVER FACILITY
- .2202 PLACEMENT OF JUVENILES
- .2203 SUPERVISION AND CONTACT
- .2204 DETENTION AUTHORIZATION
- .2205 MATERIALS TO BE PROVIDED
- .2206 CONSTRUCTION

*Statutory Authority G.S. 153A-220; 153A-221;
153A-221.1.*

**SECTION .2300 - DEFINITIONS AND
APPLICABILITY FOR JAILS**

.2301 DEFINITIONS

The following definitions shall apply in 10 NCAC 3J .2301 through .3500:

- (1) "Booking area" is a secure place where a person is admitted to a jail and procedures such as searching, fingerprinting, photographing, health screening, and collecting personal history data occur.
- (2) "Branch" is the Jail and Detention Branch of the Division of Facility Services, Department of Human Resources.
- (3) "Cell" is any confinement unit except a dormitory.
- (4) "Cellblock" is a separate and identifiable grouping of cells.
- (5) "Communicable disease or condition" is an illness or condition as defined in G.S. 130A-133 which is hereby adopted by reference pursuant to G.S. 150B-14(c).
- (6) "Confinement unit" is a single segregation cell, a single cell, a multiple occupancy cell or a dormitory.
- (7) "Contraband" is any item that a person is not authorized to possess in the jail because it is a violation of law or a violation of rules.
- (8) "Dayroom" is an area accessible to a single cell or a multiple occupancy cell, with controlled access from the cell and to which inmates may be admitted for activities such as dining, showers, physical exercise and recreation.
- (9) "Department", unless otherwise specified, is the North Carolina Department of Human Resources.
- (10) "Division", unless otherwise specified, is the Division of Facility Services of the North Carolina Department of Human Resources.
- (11) "Dormitory" is an area designed to house up to 24 inmates and that combines dayroom space with sleeping space.
- (12) "Emergency medical problem" is a serious medical need, including severe bleeding, unconsciousness, serious breathing difficulties, head injury, severe pain, suicidal behavior or severe burns, that requires immediate medical attention and that cannot be deferred until the next scheduled sick call or clinic.
- (13) "Footcandle" is the amount of light thrown on a surface one foot away from the light source. It is a unit for measuring the intensity of illumination.

PROPOSED RULES

- (14) "Governing body" refers to the governing body of a county or the policy-making body for a district confinement facility.
- (15) "Health screening" is a procedure for each newly-admitted inmate that combines visual observation with an interview to obtain relevant information about the inmate's physical and mental health.
- (16) "Holding area" is a place where inmates are temporarily held while awaiting processing, booking, court appearance, discharge, or transfer to a regular confinement unit.
- (17) "Holdover facility" is a facility as defined in G.S. 7A-517(16) which is hereby adopted by reference pursuant to G.S. 150B-14(c).
- (18) "Inmate" is any person, whether pretrial, unsentenced, or sentenced, who is confined in a jail or a county satellite jail/work release unit.
- (19) "Inmate processing area" is a secure area through which inmates enter and exit, and it may be combined with the booking area.
- (20) "Institutional-Restrained" is a Building Code occupancy classification used for buildings in which persons are restrained under lock and key or other security measures which render them incapable of self-preservation due to the security measures not being under their direct control.
- (21) "Jail" is a building or part of a building operated by a county or group of counties for the confinement of inmates, including county jails, district confinement facilities and jail annexes. It shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A of the General Statutes.
- (22) "Jail annex" is a building or a designated portion of a building designed, staffed and used primarily to house inmates who do not present security risks.
- (23) "Medical record" is a record of medical problems, examinations, diagnoses and treatments.
- (24) "Multiple occupancy cell" is a cell designed to house up to four inmates.
- (25) "Officer" is a person, whether sworn or unsworn, who is involved in the supervision, control, or custody of inmates.
- (26) "Operations manual" is a set of written policies and procedures for the operation of a jail in compliance with state and federal law and the minimum standards for the operation of jails.
- (27) "Qualified medical personnel" are persons who provide medical services to inmates and who are licensed, certified, registered, or approved, in accordance with state law. It includes persons who provide limited medical services under supervision as permitted by law.
- (28) "Registered dietician" is a specialist in the field of nutrition, dietetics and food system management who maintains current registration with the Commission on Dietetic Registration of the American Dietetic Association.
- (29) "Residential" is a Building Code occupancy classification used for buildings which provide sleeping accommodations for the occupants and in which the egress doors are unlocked at all times thereby providing free movement to the building exterior from occupied areas.
- (30) "Sally port" is an enclosed entry and exit area used either for vehicular or pedestrian traffic with gates or doors at both ends, only one of which opens at a time.
- (31) "Satellite jail/work release unit" is a unit as defined in G.S. 153A-230.1.
- (32) "Secretary", unless otherwise specified, is the Secretary of the Department of Human Resources.
- (33) "Security perimeter" is the outer portion of a jail that provides for the secure confinement of inmates and that prevents the entry of unauthorized persons or contraband.
- (34) "Security vestibule" is a defined space that provides security by using two or more doors, with each door able to operate independently, and that permits an officer to observe those who pass through the space.
- (35) "Single cell" is a cell designed to house one inmate.
- (36) "Single segregation cell" is a cell designed to house one inmate who has been removed from the general inmate population for administrative segregation, disciplinary segregation, or protective custody.
- (37) "Tamper resistant" means designed to prevent damage, destruction or interference by inmates.
- (38) "View panel" is a transparent panel.
- (39) "Visitation area" is a designated area where inmates are permitted to receive visitors according to the policies and procedures that govern visitation.
- (40) "Work release" refers to the release of a convicted inmate for employment in the community, returning to custody during nonworking hours.

Statutory Authority G.S. 153A-221.

.2302 APPLICABILITY - OPERATIONS AND

ENFORCEMENT

The operations and enforcement standards established in Section .2300 through .3300 and Section .3500 shall apply to all jails.

Statutory Authority G.S. 153A-221.

.2303 APPLICABILITY - CONSTRUCTION

(a) North Carolina State Building Code - Jails must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs (as defined by the Code).

(b) New Jails - The construction standards established in Section .3400 shall apply to all jail construction for which the final working drawings are approved by the Branch after the effective date of this Rule.

(c) Existing Jails - Existing jails for which final working drawings have been approved prior to the effective date of these rules shall continue to be governed by the existing construction standards which are now in Section .3700 and the same standards shall apply to new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule. Existing jails or new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule may use the standards found in Section .3400 in lieu of those in Section .3700 if they choose.

(d) Additions - The construction standards established in Section .3400 shall apply to any construction that adds square footage to the building and for which the final working drawings are approved after the effective date of this Rule.

(e) Alterations or Repairs - When alterations or repairs are made to an existing jail building which effect its structural strength, exits, fire hazards, electrical systems, mechanical systems, or sanitary conditions, such alterations or repairs shall comply with the standards for new construction established in Section .3400. Unaltered portions of the building shall only be required to comply with the new construction standards indicated in Section .3400 under the circumstances specified in Paragraphs (f)-(h) of this Rule.

(f) Extensive Annual Alterations or Repairs - If, within any 12 month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing jail, such jail shall conform to the construction standards for new jails established in Section .3400.

(g) Reconstruction After Damage - If an existing jail is damaged by fire or otherwise in excess

of 50 percent of the then physical value of the building at the time of damage, the jail shall be reconstructed in conformance with the construction standards for new jails established in Section .3400.

(h) Physical Value - For the purpose of this Rule, the physical value of the jail building shall be determined by the local building inspection department.

Statutory Authority G.S. 153A-221.

SECTION .2400 - OPERATIONS MANUAL FOR JAILS

.2401 REQUIREMENT FOR OPERATIONS MANUAL

Within 12 months after the effective date of this Rule, the sheriff or the administrator of a regional jail shall develop written policies and procedures that describe how the jail will be operated.

Statutory Authority G.S. 153A-221.

.2402 PURPOSE OF OPERATIONS MANUAL

The purpose of the operations manual is to ensure the smooth and efficient operation of the jail, and therefore it shall be detailed enough to guide officers in completing their assigned duties. The operations manual shall be available to all officers, and each officer shall be familiar with the manual.

Statutory Authority G.S. 153A-221.

.2403 CONTENTS OF OPERATIONS MANUAL

(a) The operations manual shall include written policies and procedures that address the following areas:

- (1) administration and management;
- (2) admissions, transportation and release;
- (3) classification;
- (4) security and supervision;
- (5) inmate rules and discipline;
- (6) management of special inmates;
- (7) legal rights of inmates;
- (8) health services;
- (9) food services;
- (10) program services;
- (11) work release;
- (12) opportunities for exercise;
- (13) access to legal assistance or legal materials;
- (14) grievance procedures;
- (15) visitation and mail policies;
- (16) religious activities;
- (17) sanitation;
- (18) emergency plans.

PROPOSED RULES

(b) The most recent editions of the following references are available as guides for developing policies and procedures:

- (1) Appalachian State University, Model Policies and Procedures Manual for North Carolina Jails;
- (2) American Correctional Association, Standards for Adult Local Detention Facilities;
- (3) American Correctional Association, Standards for Small Jails;
- (4) National Commission on Correctional Health Care, Standards for Health Services in Jails.

These references shall be available for inspection or loan from the Branch. Consultation and technical assistance shall be available from the Branch. The Branch can also provide information regarding outside agencies with additional resources for developing policies and procedures.

Statutory Authority G.S. 153A-221.

.2404 REVIEW OF MANUAL

The operations manual shall be reviewed and updated at least once each year by the sheriff or the administrator of a regional jail.

Statutory Authority G.S. 153A-221.

SECTION .2500 - CLASSIFICATION AND HOUSING

.2501 CLASSIFICATION SYSTEM

Each jail shall have a written classification procedure for the placement and housing of inmates. Within the limitations imposed by the design and capacity of the jail, the procedure shall assign inmates to confinement units that best meet their individual needs and that reasonably protect the inmate, other inmates, the jail staff, and the public.

Statutory Authority G.S. 153A-221.

.2502 FEMALE INMATES

Male and female inmates shall not be placed in the same confinement unit, and, in addition, female inmates shall be housed out of sight of male inmates.

Statutory Authority G.S. 153A-221.

.2503 CONFINEMENT OF MALES UNDER 18 YEARS OF AGE

Male inmates under 18 years of age shall be confined in separate sleeping quarters from adult inmates.

Statutory Authority G.S. 153A-221.

.2504 CONFINEMENT OF JUVENILES UNDER AGE 16

Any juvenile under age 16 who is transferred to superior court for trial as an adult and who is ordered held in the jail pursuant to G.S. 7A-611 shall be confined in a holdover facility where the juvenile cannot converse with, see, or be seen by the adult inmates.

Statutory Authority G.S. 153A-221.

.2505 DISCRIMINATION IN HOUSING ASSIGNMENTS

Housing assignments shall not be made on the basis of race, color, creed, national origin, or political belief.

Statutory Authority G.S. 153A-221.

SECTION .2600 - FIRE SAFETY

.2601 EXITS

Each jail shall have readily accessible emergency exits in compliance with the North Carolina State Building Code in order to permit the prompt evacuation of inmates and staff during an emergency. Egress doors in jails which are classified as "Residential Occupancy" by the North Carolina State Building Code shall remain unlocked at all times thereby permitting free movement to the building exterior from occupied areas.

Statutory Authority G.S. 153A-221.

.2602 FIRE EQUIPMENT

Each jail shall provide the following emergency fire equipment:

- (1) fire extinguishers that meet all of the requirements in National Fire Prevention Association pamphlet number 10 which is hereby adopted by reference pursuant to G.S. 150B-14(c); and
- (2) smoke detection equipment that meets the requirements of the North Carolina State Building Code.

Statutory Authority G.S. 153A-221.

.2603 FIRE PLAN

(a) Each jail shall have a written plan for the evacuation and control of inmates in the event of a fire. The plan shall include at least quarterly fire drills, and records shall be made of the fire drills and retained. The actual movement of inmates to other areas or outside the building is not required.

(b) Evacuation routes shall be posted or otherwise clearly marked throughout the jail.

(c) The sheriff or the regional jail administrator shall request in writing that the local fire department or fire marshall inspect the jail and review the fire plan at least once each year.

Statutory Authority G.S. 153A-221.

.2604 MATTRESSES

Mattresses shall be of fire resistive and nontoxic construction.

Statutory Authority G.S. 153A-221.

.2605 KEYS

Each jail that is required to meet the "Institutional Occupancy - Restrained" requirements of the North Carolina State Building Code shall have a key control system that includes the following elements:

- (1) a key control center that is secure and inaccessible to unauthorized persons at all times;
- (2) a set of duplicate keys to be stored in a safe place that is inaccessible to unauthorized persons at all times;
- (3) an accounting procedure for issuing and returning keys; and
- (4) a system of keys and matching locks that are color-coded and marked for identification by touch.

Statutory Authority G.S. 153A-221.

SECTION .2700 - SECURITY

.2701 GENERAL SECURITY REQUIREMENTS

Each jail shall meet the following security requirements:

- (1) provide for the secure confinement of inmates from the time of their passage through the security perimeter until release;
- (2) provide for the locked storage of weapons when persons enter the security perimeter;
- (3) prevent the passage of contraband;
- (4) prevent unauthorized contact between inmates and persons from outside the jail;
- (5) provide a ground-level perimeter exterior that is well lighted; and
- (6) provide a communications link with outside agencies for use in emergencies.

Statutory Authority G.S. 153A-221.

SECTION .2800 - SUPERVISION

.2801 SUPERVISION

(a) Officers shall make supervision rounds and directly observe each inmate in person at least twice per hour on an irregular basis. The supervision rounds shall be documented. If remote electronic monitoring is used to supplement supervision, it shall not be substituted for supervision rounds and direct visual observation.

(b) Officers shall maintain voice or visual contact with all inmates at all times, and it shall be through either direct observation or by means of electronic surveillance.

(c) There shall be more frequent observation of inmates who are assaultive, suicidal, intoxicated, mentally ill or who have other special needs or problems.

(d) Officers shall remain awake at all times.

(e) Officers shall not be assigned other duties that would interfere with the continuous supervision of inmates.

(f) Female officers shall be on duty when female inmates are confined.

(g) The sheriff or the administrator of the regional jail shall develop a contingency plan for the supervision and control of inmates during an emergency, and that plan shall provide for the addition of extra personnel.

(h) Inmates shall not be allowed to supervise or assume any control over other inmates.

Statutory Authority G.S. 153A-221.

SECTION .2900 - SANITATION AND PERSONAL HYGIENE

.2901 SANITATION

Each jail shall comply with the North Carolina Commission for Health Services rules governing sanitation as codified in 10 NCAC 10A Section .0100 and which are hereby adopted by reference pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 153A-221.

.2902 MATTRESSES AND BEDDING

Mattresses, sheets, and blankets that are clean and in good repair shall be supplied to all inmates except those not housed overnight. Clean sheets shall be issued at least once a week. Mattresses shall meet the following requirements:

- (1) Mattresses shall comply with Commission for Health Services rules on sanitation, 10 NCAC 10C, Rules .0312 - .0326 and G.S. Chapter 130A-273 which are adopted by reference pursuant to G.S. 150B-14(c).
- (2) Mattresses shall not be less than four inches thick and shall be the same length and width as the jail bunks.

- (3) Mattresses shall not have any metal, plastic, or other rigid framing component.
- (4) Mattress ticking shall be durable and water repellent.

Statutory Authority G.S. 153A-221.

.2903 SHAVING

Each inmate shall be provided with individual shaving supplies, and inmates shall not be allowed to share razors.

Statutory Authority G.S. 153A-221.

.2904 SHOWERS

Inmates shall have access to showers a minimum of three times per week. Inmates on work release shall have daily access to showers. Bath towels and soap shall be provided.

Statutory Authority G.S. 153A-221.

.2905 PERSONAL HYGIENE ITEMS

Every inmate detained over 24 hours shall be issued the following items as appropriate:

- (1) Toothbrush;
- (2) Toothpaste or powder;
- (3) Comb; and
- (4) Feminine hygiene products.

Statutory Authority G.S. 153A-221.

SECTION .3000 - COMMISSARY OR CANTEEN SERVICES

.3001 AVAILABILITY OF SERVICES

Each jail shall make commissary or canteen items, including snacks and personal hygiene products, available for purchase by inmates. The items shall be available either directly from officers or through contract vending. The price of these items shall be no higher than local retail prices.

Statutory Authority G.S. 153A-221.

SECTION .3100 - FOOD

.3101 FOOD SERVICE

(a) In jails that purchase meals from an outside provider, a written contract shall require the provider to meet the applicable standards in this Section.

(b) Inmates shall not be used as the sole source of personnel for the preparation or service of any meal.

Statutory Authority G.S. 153A-221.

.3102 MEAL SERVICE

(a) Each jail shall provide at least three meals for inmates, two of which must be hot, at regular times during each 24-hour period. There shall be not more than 14 hours between the evening meal and breakfast.

(b) Food shall be served to inmates on individual serving trays. Eating utensils and condiments shall be provided.

(c) While food is being transported, it shall be covered to prevent contamination and to maintain appropriate serving temperatures.

(d) Food shall never be used as a reward or punishment.

(e) Each jail shall keep a daily record of the number of meals served. In addition, each jail shall record the number of modified diets served at each meal, along with the name of each inmate and the type of modified diet that he or she received.

Statutory Authority G.S. 153A-221.

.3103 FOOD AND NUTRIENT REQUIREMENTS

(a) The average nutrient content of weekly menus shall meet the Recommended Dietary Allowances of the National Academy of Sciences which are hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Daily menus shall include the following:

- (1) Milk Group: Two servings;
- (2) Fruit Group: Two servings, one of which shall be citrus;
- (3) Vegetable Group: Three servings;
- (4) Meat or Protein Group: Two servings;
- (5) Cereal or Bread Group: Four servings of whole grain or enriched products; and
- (6) Calories: 2,100 - 2,500.

(c) For all pregnant women, children and teenagers, increase the milk allowance to four cups per day.

Statutory Authority G.S. 153A-221.

.3104 MENUS

(a) Menus shall be prepared in consultation with a registered dietician.

(b) Menus shall be written and portion sizes shall be specified.

(c) Menus shall be dated and posted one week in advance.

(d) Menus shall be served as written to inmates in the jail. Any necessary substitutions shall be of comparable nutritional value, and a written record of substitutions shall be kept.

(e) The same menu shall not be served at lunch and dinner on the same day.

(f) Dated menus and records of any substitutions shall be retained for three years.

Statutory Authority G.S. 153A-221.

.3105 MODIFIED DIETS

(a) Modified diets shall be provided if prescribed by appropriate medical or dental personnel.

(b) Modified diets shall be provided when reasonably possible to accommodate the sincerely held religious beliefs of an inmate.

(c) Written menus for modified diets shall be prepared in consultation with a registered dietician.

(d) Modified diets shall be served as written. Any necessary substitutions shall be of comparable nutritional value, and a written record of substitutions shall be kept. Dated menus of modified diets and records of any substitutions shall be retained for three years.

(e) Each jail shall maintain a current list of inmates requiring modified diets, and it shall be posted for use by staff.

Statutory Authority G.S. 153A-221.

SECTION .3200 - MEDICAL CARE OF INMATES

.3201 MEDICAL PLAN

(a) A written medical plan shall be developed in compliance with G.S. 153A-225 and it shall be available for ready reference by jail personnel. The medical plan shall include a description of the health services available to inmates.

(b) The written plan shall include policies and procedures that address the following areas:

- (1) Health screening of inmates upon admission;
- (2) Handling routine medical care;
- (3) The handling of inmates with chronic illnesses or known communicable diseases or conditions;
- (4) Administration, dispensing and control of prescription and non-prescription medications;
- (5) Handling emergency medical problems, including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health;
- (6) Maintenance and confidentiality of medical records; and
- (7) Privacy during medical examinations and conferences with qualified medical personnel.

(c) Inmate health complaints must be solicited daily by a health professional or by an officer.

Qualified medical personnel shall be available to evaluate the medical needs of inmates. A written record shall be maintained of the request for medical care and the action taken.

(d) Inmates shall not perform any medical functions in the jail.

(e) The medical plan shall be reviewed annually.

Statutory Authority G.S. 153A-221.

.3202 HEALTH SCREENING FORM

The health screening form completed upon admission by an officer shall be available to jail officers, and a copy of the form shall be kept in any medical file that is maintained for inmates.

Statutory Authority G.S. 153A-221.

.3203 MEDICAL ISOLATION

Each jail shall separate inmates who require medical isolation from other inmates, either by housing them in a separate area of the jail or by transferring them to another facility.

Statutory Authority G.S. 153A-221.

.3204 EXERCISE

After the fourteenth consecutive day of confinement, each inmate shall be provided opportunities for physical exercise at least three days weekly for a period of one hour. Physical exercise shall take place either in the confinement unit if it provides adequate space or in a separate area of the jail that provides adequate space.

Statutory Authority G.S. 153A-221.

SECTION .3300 - REPORTS

.3301 MONTHLY REPORT FOR JAILS

The sheriff or the administrator of a regional jail shall complete a monthly report on Form DIIR-JDS-1 and send it to the Branch no later than the tenth day of the following month.

Statutory Authority G.S. 153A-221.

.3302 REPORT OF DEATH

The report of an inmate death required by G.S. 153A-225 shall be submitted to the Branch.

Statutory Authority G.S. 153A-221.

SECTION .3400 - STANDARDS FOR NEW JAIL DESIGN AND CONSTRUCTION

.3401 APPLICABILITY - CONSTRUCTION

(a) North Carolina State Building Code - Jails must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs (as defined by the Code).

(b) New Jails - The construction standards established in Section .3400 shall apply to all jail construction for which the final working drawings have been approved by the Branch after the effective date of this Rule.

(c) Existing Jails - Existing jails for which final working drawings have been approved prior to the effective date of these rules shall continue to be governed by the existing construction standards which are now in Section .3700 and the same standards shall apply to new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule. Existing jails or new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule may use the standards found in Section .3400 in lieu of those in Section .3700 if they choose.

(d) Additions - The construction standards established in Section .3400 shall apply to any construction that adds square footage to the building and for which the final working drawings are approved after the effective date of this Rule.

(e) Alterations or Repairs - When alterations or repairs are made to an existing jail building which effect its structural strength, exits, fire hazards, electrical systems, mechanical systems, or sanitary conditions, such alterations or repairs shall comply with the standards for new construction established in Section .3400. Unaltered portions of the building shall only be required to comply with the new construction standards indicated in Section .3400 under the circumstances specified in Paragraphs (f)-(h) of this Rule.

(f) Extensive Annual Alterations or Repairs - If, within any 12 month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing jail, such jail shall conform to the construction standards for new jails established in Section .3400.

(g) Reconstruction After Damage - If an existing jail is damaged by fire or otherwise in excess of 50 percent of the then physical value of the building at the time of damage, the jail shall be reconstructed in conformance with the construction standards for new jails established in Section .3400.

(h) Physical Value - For the purpose of this Rule, the physical value of the jail building shall be determined by the local building inspection department.

Statutory Authority G.S. 153A-221.

.3402 CONSULTATION AND TECHNICAL ASSISTANCE

Consultation and technical assistance in planning a new jail shall be available through the Branch.

Statutory Authority G.S. 153A-221.

.3403 COMPLIANCE REVIEW AND APPROVAL

(a) The governing body shall submit copies of the following to the Branch before it begins construction of a new jail and before it makes additions or alterations to an existing jail as defined by the North Carolina State Building Code:

- (1) three sets of schematic drawings and outline specifications;
- (2) three sets of preliminary working drawings or design development drawings and outline specifications;
- (3) three sets of completed final working drawings and specifications.

(b) Upon receipt of the drawings and specifications at each stage, the Branch shall send one set each to the following for their review and approval: the Department of Insurance to insure compliance with the North Carolina State Building Code, and the Division of Environmental Health in the Department of Environment, Health, and Natural Resources to insure compliance with the rules governing sanitation as codified in 10 N.C.A.C. 10A, Section .0100 and which are hereby adopted by reference pursuant to G.S. 150B-14(c). The Branch shall keep one set for its own review and approval to insure compliance with the minimum standards for the operation and construction of jails as contained in this Subchapter.

Statutory Authority G.S. 153A-221.

.3404 SPECIFIC CONSTRUCTION REQUIREMENTS

(a) Jails that restrain inmates under lock and key within a building shall meet the requirements of the North Carolina State Building Code for "Institutional Occupancy - Restrained" and the additional security requirements imposed by Rule .3420.

(b) Jails that do not restrain inmates within a building by lock and key shall meet the requirements of the North Carolina State Building Code for "Residential Occupancy".

(c) The construction materials in all jails shall be sufficient to provide the degree of security required for the area in which they are used.

Statutory Authority G.S. 153A-221.

.3405 CENTRAL CONTROL STATION

In jails that have a central control station, the station shall:

- (1) be strategically located and equipped to regulate and monitor the movement of inmates and officers;
- (2) have a security vestibule at its entrance;
- (3) have direct two-way voice communication with all confinement units;
- (4) have direct two-way voice communication with all officers as needed to maintain safety and security;
- (5) be equipped with a release mechanism to open all confinement unit doors in an emergency;
- (6) have a toilet and sink.

Statutory Authority G.S. 153A-221.

.3406 ELEVATORS

Elevators that open into the jail shall be secure and shall be under the control and observation of officers.

Statutory Authority G.S. 153A-221.

.3407 INMATE PROCESSING AREA

Each jail that performs a booking and release function shall have an inmate processing area that includes the following:

- (1) a separate inmate entrance;
- (2) a holding area with seating and access to a commode, lavatory, drinking fountain, and a shower;
- (3) a booking area that includes space for photographing and fingerprinting inmates and a telephone for making local and long-distance calls; and
- (4) a sobriety testing area.

Statutory Authority G.S. 153A-221.

.3408 VISITATION AREAS

(a) Each jail shall provide an area for visitation.
(b) If provided, noncontact visitation areas shall:

- (1) provide seating for the inmate and visitors;
- (2) provide a view panel with minimum dimensions of 1' x 1' between the inmate and visitors;
- (3) provide a telephone communication system or equivalent audio link between the inmate and visitors;
- (4) permit visual and audible observation by officers; and

- (5) prevent the passage of contraband.
- (c) If provided, contact visitation areas shall:
- (1) provide seating for the inmate and visitors; and
 - (2) permit visual and audible observation by officers.
- (d) Confidential attorney visitation areas shall:
- (1) permit contact between the inmate and attorney;
 - (2) be separate and distinct from the general visitation area;
 - (3) provide seating and a writing table for the inmate and attorney;
 - (4) permit only visual monitoring by the officers;
 - (5) provide a way for the attorney to contact officers if needed; and
 - (6) provide a minimum of 30 footcandles of artificial light.

Statutory Authority G.S. 153A-221.

.3409 MEDICAL AREA

(a) Each jail shall have a medical area that provides the following:

- (1) a door that may be locked;
- (2) locked storage for equipment, supplies, medications and medical records;
- (3) an examination table and a handicapped-accessible sink, toilet and shower;
- (4) a work station for the doctor and nurse;
- (5) a telephone; and
- (6) direct voice contact with officers.

(b) If a county or a region has more than one jail, it shall be required to provide only one medical area if that area meets the medical needs of the inmates in all of the jails.

Statutory Authority G.S. 153A-221.

.3410 OTHER AREAS

(a) Each jail that does not contract for meals shall have a kitchen. If a county or a regional jail has more than one jail, it shall be required to provide only one kitchen if it meets the needs of the inmates in all of the jails.

(b) Each jail that does not contract for laundry services shall have a laundry. If a county or a regional jail has more than one jail, it shall be required to provide only one laundry if it meets the needs of the inmates in all of the jails.

(c) Each jail shall have an area specifically designated for physical exercise.

(d) Each jail shall provide areas with shelves that meet its storage needs. Each jail shall provide a separate area for the secure storage of inmate personal property.

PROPOSED RULES

(e) Each jail shall have a cleaning area that is equipped with a sink and that provides for the storage of cleaning supplies and equipment.

(f) Each jail shall provide lockers for those inmates who are placed on work release.

Statutory Authority G.S. 153A-221.

.3411 ADMINISTRATIVE FACILITIES

Each jail shall provide space at some location for the following administrative activities:

- (1) Secretarial support;
- (2) Record storage;
- (3) Training materials and resources;
- (4) Mailboxes and bulletin boards for officers;
- (5) In-service training;
- (6) Office space for jail supervisors.

Statutory Authority G.S. 153A-221.

.3412 FLOORS, CEILINGS, AND WALLS

(a) All floors in confinement units shall be sloped toward drains located outside of the cell areas, and the drains shall be tamper-resistant if necessary for security.

(b) All ceilings, walls, and floors in confinement units shall have a finished surface that is easily cleaned, nontoxic, and predominantly of light colors.

Statutory Authority G.S. 153A-221.

.3413 SHOWERS AND PLUMBING FIXTURES

(a) Each jail shall provide at least one shower for every eight inmates.

(b) Showers shall have drains that prevent water from draining outside the shower, and the shower fixtures and drains shall be tamper-resistant if necessary for security.

(c) Plumbing fixtures shall be made of stainless steel or other materials as necessary for security.

(d) Drinking fountains shall be equipped with mouth guards.

(e) All privacy partitions in showers and bathrooms shall be high enough to allow limited privacy for the inmates while still allowing adequate supervision by officers.

Statutory Authority G.S. 153A-221.

.3414 WINDOWS AND GLAZING

(a) Windows and window framing, including glazing, shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Glazing shall be diffused or obscured if it affords a view into confinement units from outside the jail.

(c) View panels shall be made of materials necessary to provide the degree of security required for the area in which they are used, and those used for confinement units shall have a minimum area of 180 square inches and permit observation of the entire unit.

Statutory Authority G.S. 153A-221.

.3415 DOORS, BUNKS AND LOCKS

(a) Doors, locks and detention hardware shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Doors to all confinement units shall have view panels.

(c) Doors shall operate independently of each other, and the cell doors in a cellblock shall be capable of simultaneous release during an emergency.

(d) Doors and locks that are electronically controlled shall be equipped with manual override.

(e) Food passèes, if used, shall have large enough openings to permit the passage of a food tray.

(f) Bunks shall have dimensions necessary to accommodate a standard detention mattress and they shall be securely anchored at least 15 inches above the floor. When one bunk is placed above another, the lower bunk shall be approximately 15 inches and the upper bunk approximately 50 inches above the floor.

(g) Doors, locks, detention hardware and bunks shall be designed to inhibit their use for an attempted suicide.

Statutory Authority G.S. 153A-221.

.3416 SAFETY EQUIPMENT

In each jail the safety equipment, including intercoms, fire extinguishers, smoke detectors, and sprinkler heads, shall be tamper-resistant if necessary for security.

Statutory Authority G.S. 153A-221.

.3417 MECHANICAL SYSTEMS

(a) Each jail shall have heating, ventilation, and air conditioning systems that are capable of maintaining temperatures in confinement units at a minimum of 68 degrees Fahrenheit during the heating season and a maximum of 85 degrees Fahrenheit during the cooling season.

(b) The master controls for the system shall be located outside the confinement units and shall be accessible to officers during an emergency.

(c) The ducts for the systems shall be designed to prevent the escape of inmates and the passage of contraband, and they shall be designed to inhibit their use for attempted suicide.

(d) The ventilation system shall provide a minimum of ten cubic feet per minute of fresh or purified air for each inmate.

Statutory Authority G.S. 153A-221.

.3418 PLUMBING SYSTEMS

(a) Each jail shall have a plumbing system that complies with the Commission for Health Services Rule 10 N.C.A.C. 10A and the North Carolina State Plumbing Code, both of which are hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Each jail shall have a hot water supply for lavatories and showers designed to meet the usual needs of the number of inmates confined in the jail.

(c) The master control valves for the plumbing system shall be located outside the confinement units and shall be accessible to officers during an emergency.

Statutory Authority G.S. 153A-221.

.3419 ELECTRICAL SYSTEMS

(a) Each jail shall have an electrical system that provides artificial lighting in the confinement units of at least 30 footcandles and that can be reduced during sleeping hours.

(b) Artificial lighting in the corridors shall be at least 20 footcandles.

(c) Lighting fixtures shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(d) Each jail shall provide electrical and antenna or cable connections for a television in its dayroom areas.

(e) The master controls and circuit breakers shall be located outside the confinement units and shall be accessible to officers during an emergency.

(f) Each jail shall have an auxiliary emergency power supply for each electrical system.

Statutory Authority G.S. 153A-221.

.3420 ADDITIONAL SECURITY REQ/INST OCCUPANCY/RESTRAINED JAILS

Each jail that is required to meet the "Institutional Occupancy - Restrained" requirements of the North Carolina State Building Code shall also meet the following security requirements:

(1) Each jail shall have a separate entrance for inmates, and all entrances to the jail shall

be controlled and visually and audibly monitored.

(2) Each jail shall have security perimeter walls that are provided with a security vestibule, sally port, security window, security door, or other security device at each wall opening.

(3) Clothing or towel hooks shall not be used.

Statutory Authority G.S. 153A-221.

.3421 CONFINEMENT UNITS

The governing body shall decide what confinement unit or combination of confinement units it will include in its jail: single segregation cells, single cells, multiple occupancy cells, or dormitories.

Statutory Authority G.S. 153A-221.

.3422 STANDARDS FOR SINGLE SEGREGATION CELLS

Each single cell used for segregation shall have:

- (1) a shower or access to a shower;
- (2) a telephone jack or other telephone arrangement provided within the cell;
- (3) a food pass;
- (4) a minimum floor space of 70 square feet, a minimum floor dimension of 7 feet, a toilet, a sink, a drinking fountain and a security mirror.

Statutory Authority G.S. 153A-221.

.3423 STANDARDS FOR SINGLE CELLS

Each single cell shall have:

- (1) a minimum floor space of 50 square feet;
- (2) a minimum floor dimension of 7 feet;
- (3) a toilet, a sink, a drinking fountain and a security mirror; and
- (4) access to a dayroom.

Statutory Authority G.S. 153A-221.

.3424 STANDARDS FOR MULTIPLE OCCUPANCY CELLS

Each multiple occupancy cell shall house no more than four inmates and shall have:

- (1) a minimum floor space of 50 square feet for the first inmate and 35 square feet of floor space for each additional inmate;
- (2) a minimum floor dimension of seven feet;
- (3) a toilet, a sink, a drinking fountain and a security mirror; and
- (4) access to a dayroom.

Statutory Authority G.S. 153A-221.

.3425 STANDARDS FOR DAYROOMS

Each dayroom shall have:

- (1) a security vestibule at its entrance;
- (2) a minimum floor space of 105 square feet or 35 square feet per inmate, whichever is greater;
- (3) sufficient seating and tables for each inmate;
- (4) a telephone jack or other telephone arrangement provided within the dayroom; and
- (5) a way for officers to observe the entire area from the entrance.

Statutory Authority G.S. 153A-221.

.3426 STANDARDS FOR DORMITORIES

Each dormitory shall house no more than 40 inmates and shall have:

- (1) a minimum floor space of 70 square feet per inmate including both the sleeping and dayroom area;
- (2) one shower per eight inmates, one toilet per six inmates, one sink per six inmates, one water fountain and a security mirror;
- (3) a telephone jack or other telephone arrangement provided within the dormitory;
- (4) space designed to allow a variety of activities;
- (5) sufficient seating and tables for all inmates; and
- (6) a way for officers to observe the entire area from the entrance.

Statutory Authority G.S. 153A-221.

SECTION .3500 - INSPECTION AND ENFORCEMENT OF MINIMUM STANDARDS

.3501 INSPECTIONS

All jails shall be visited and inspected at least twice each year, but a jail shall be inspected more frequently if the Department considers it necessary or if it is required by an agreement of correction pursuant to 10 NCAC 3J .3504.

Statutory Authority G.S. 153A-220; 153A-221.

.3502 REPORT OF INSPECTION

(a) The procedures contained in G.S. 153A-222 shall govern all inspections except those that find noncompliance with one or more of the provisions listed in Paragraph (b) of this Rule.

(b) The inspector shall forward a copy of the inspection report to the Secretary within ten days after the inspection if there are findings of noncompliance with any of the following standards contained in 10 NCAC 3J or the following statutes:

- (1) Classification; Section .2500;
- (2) Fire Safety; Section .2600;

- (3) Supervision; Section .2800;
- (4) Sanitation and Personal Hygiene; Section .2900;
- (5) Food; Section .3100;
- (6) Medical Care of Inmates; Section .3200;
- (7) G.S. 153A-224, Supervision of Jails; or
- (8) G.S. 153A-226(b), Disapproval for Public Health Purposes.

(c) The inspector at the same time shall submit to the Secretary a written description of the conditions that caused noncompliance and a preliminary determination of whether those conditions jeopardize the safe custody, safety, health or welfare of the inmates confined in the jail.

(d) The inspection report shall be submitted to the local officials responsible for the jail within 30 days after the inspection as required by G.S. 153A-222, and it shall include a notice that the facility was not in compliance with one or more of the provisions listed in Paragraph (b) of this Rule. The notice shall state that the report has been submitted to the Secretary on a designated date for a final determination of whether conditions at the jail jeopardize the safe custody, safety, health or welfare of its inmates. The notice shall state that local officials will be mailed a final determination within 30 days of the designated date.

Statutory Authority G.S. 153A-220; 153A-221.

.3503 DETERMINATION THAT CONDITIONS JEOPARDIZE INMATES

(a) The Secretary shall determine whether conditions in the jail jeopardize the safe custody, safety, health or welfare of its inmates within 30 days after receipt of the inspection report and the supporting materials.

(b) The Secretary may determine that noncompliance with any of the provisions listed in 10 NCAC 3J .3502(b) jeopardizes the safe custody, safety, health or welfare of inmates confined in the jail.

(c) Although noncompliance with other specific standards or statutes may be found to jeopardize inmate or staff safe custody, safety, health or welfare, the Secretary shall determine that noncompliance with any of the following provisions contained in 10 NCAC 3J jeopardizes the safe custody, safety, health or welfare of inmates confined in the jail:

- (1) Mattress flame retardant requirements; Rule .2604;
- (2) Emergency exits; Rule .2601;
- (3) Fire plan; Rule .2603;
- (4) Fire equipment; Rule .2602;
- (5) Separation of male and female inmates; Rule .2502;

- (6) Separation of inmates under age 18; Rule .2503;
- (7) Medical plan; Rule .3201;
- (8) Disapproval for public health purposes; G.S. 153A-226(b).

(d) The Secretary shall notify the local officials responsible for the jail within 15 days of his final determination if he concludes that the conditions in the jail jeopardize the safe custody, safety, health or welfare of the inmates. The Secretary shall order corrective action, order the jail closed, or enter into an agreement of correction with local officials pursuant to 10 NCAC 3J .3504.

(e) The Secretary shall notify the local officials responsible for the jail within 15 days of his final determination if he concludes that the conditions in the jail do not jeopardize the safe custody, safety, health or welfare of the inmates. The notice shall direct local officials to consider the inspection report and initiate corrective action pursuant to the provisions of G.S. 153A-222.

Statutory Authority G.S. 153A-220; 153A-221.

.3504 AGREEMENT OF CORRECTION

(a) Before ordering corrective action or ordering the jail closed, the Secretary may direct the governing body to enter into an agreement of correction. If the Secretary chooses this option, he shall require the governing body to enter into a written agreement within 30 days after it receives notice that conditions in the jail jeopardize the safe custody, safety, health or welfare of the inmates.

(b) The agreement of correction at a minimum shall indicate the specific areas of noncompliance with the standards or statutes, the governing body's intent to remedy noncompliance; a plan for remedying the noncompliance, a definite and reasonable number of days within which the jail will be brought into compliance and a schedule of inspections to monitor compliance.

(c) The agreement of correction may be extended once for a period not to exceed 60 days if the time period in the initial agreement expires before the jail is brought into compliance, but only if the governing body is making a good faith effort to achieve compliance.

(d) If the jail is not brought into compliance within the time period required by Paragraph (c) of this Rule, the Secretary shall order corrective action or order the jail closed.

Statutory Authority G.S. 153A-220; 153A-221.

.3505 ORDER OF CORRECTIVE ACTION OR ORDER OF CLOSURE

If the Secretary determines that an agreement of correction is not appropriate, or if he determines that a jail is not brought into compliance within the time period required by an agreement of correction, the Secretary shall order corrective action or order the jail closed. Notice of the action taken shall be given to local officials responsible for the jail as provided by G.S. 153A-223(1).

Statutory Authority G.S. 153A-220; 153A-221.

.3506 DESIGNATION BY SECRETARY

The Secretary may designate a person to act for him with respect to matters covered by this Section. The designation shall be in writing and it shall be on file with the Branch.

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .3700 - CONSTRUCTION STANDARDS FOR EXISTING FACILITIES

.3701 DEFINITIONS

The following definitions shall apply in 10 NCAC 3J .3700:

- (1) "County jail" is a detention facility designated for the confinement of persons confined for varying periods of time including persons awaiting adjudication and short-term sentences as well as persons serving sentences while on work release. The facility is authorized, maintained and administered by officials at the county level.
- (2) "Municipal jail" is a facility designated for the confinement of persons for periods not to exceed 24 hours, pending release or transfer to county jail. The facility is authorized, maintained and administered by officials at the municipal level.
- (3) "Local lock-up" is a facility designated for the temporary confinement of persons not to exceed six hours pending either release or transfer to a county jail. The facility is authorized, maintained and administered by officials at the municipal level.
- (4) "Regional or district jail" is a facility designated for the identical purpose as a county jail except authorization, maintenance and administration is under the control of a joint governing body comprised of authorized representatives for the participating counties.
- (5) Because of current changes from the traditional in terminology associated with the confinement setting, the following comparison of a limited number of terms is included:

PROPOSED RULES

- (a) "Terminology used in standards" is the same as "traditional or approximate synonym".
- (b) "Single sleeping room" is the same as "single cell".
- (c) "Multiple sleeping room" is the same as "multiple (four-man) cell".
- (d) "Isolation room" is the same as "solitary cell".
- (e) "Dayroom" is the same as "cell run-around".
- (f) "Confinement unit" is the same as "cell-block".
- (g) "Holding area" is the same as "bull pen".
- (h) "Sally port" is the same as "yard gate" (for vehicles).

Statutory Authority G.S. 153A-220; 153A-221.

.3702 BUILDING MATERIALS AND CONSTRUCTION REQUIREMENTS

- (a) The walls and roof shall be made of:
 - (1) reinforced concrete that complies with the North Carolina State Building Code, or
 - (2) masonry that complies with approved plans and specifications, or
 - (3) other materials that comply with the North Carolina State Building Code.
- (b) The interior walls in security areas shall be made of:
 - (1) reinforced concrete that is at least four inches thick and finished smooth, or
 - (2) cement masonry (CMU) and brick that is at least eight inches thick, or
 - (3) approved steel as specified in Rule .3713 of this Section.
- (c) Interior floors shall be made of concrete that is finished smooth, terrazzo, quarry tile, or other approved material.
- (d) Interior ceilings shall be made of:
 - (1) reinforced concrete that is finished smooth, or
 - (2) approved steel as specified in Rule .3713 of this Section, or
 - (3) other approved material.
- (e) Grating fronts and grating doors for single and multiple rooms shall be made of tool-resisting steel, as specified in Rule .3713(1)(a) of this Section, unless enclosed in a tool resisting perimeter.
- (f) Safety vestibule grating and interior grating doors shall be made of tool-resisting steel, as specified in Rule .3713(1)(a) of this Section.
- (g) Materials shall be non-combustible and shall have fire-resistive ratings if required by the North Carolina State Building Code.
- (h) A local confinement facility shall not be located in or attached to buildings with less than

fire-resistive construction, unless the confinement area is separated by an approved masonry firewall.

Statutory Authority G.S. 153A-220; 153A-221.

.3703 DOORS

(a) All doors that open into booking or control areas of jails shall be security doors as specified in Rules .3714 and .3715 of this Section, unless other exterior security is provided, including either a sally port, a controlled gate, or fencing.

(b) Exit doors shall be security type doors and they shall be keyed to both sides.

(c) The number of exits, the width and location of exit doors, and the swing of exit doors shall comply with North Carolina State Building Code.

(d) Sally port doors shall be of the security type and shall be installed in accordance with approved plans and specifications.

(e) Swinging plate doors of approved type as specified in Rule .3715(a) to (c) of this Section shall be provided with a speaking panel and an observation port when employed on safety vestibules and in other locations as may be approved in plans and specifications.

(f) Swinging plate doors with a prison type lock or hollow metal doors of approved types with an observation port shall be used at entrances to inspection corridors. Hollow metal doors shall have heavy-duty lock with multiple tumblers.

(g) An approved grill, a hollow metal security door, or a plate security door shall be used at all entrances to security areas (see Rule .3715 of this Section).

(h) Grill doors to individual rooms shall be made of open hearth steel only if it is enclosed in a tool-resisting perimeter.

(i) Pipe chase access doors or plates shall be made of approved security-type plate or hollow metal (Rule .3716 of this Section) according to approved plans and specifications.

(j) Access doors in all inmate occupied areas shall be equipped with observation ports and food passes according to approved plans and specifications.

(k) In all areas occupied by female inmates, observation ports shall be equipped with an operating hatch that may be closed from the outside and secured to provide privacy.

(l) If electro-mechanical capability is used in a security door installation within the confinement area, the control box shall provide a mechanical over-ride in the event of power failure.

(m) All door-locking mechanisms shall be of the approved type (see Rule .3717 of this Sec-

tion) and installed according to approved plans and specifications.

(n) Elevator doors opening into jail areas shall be secure and located so as to be under observation and control of officers.

(o) The controls for sally port doors shall be located within the booking control area to provide constant surveillance by supervisory personnel.

Statutory Authority G.S. 153A-220; 153A-221.

.3704 WINDOWS AND SECURITY SCREENING

(a) All windows shall open and close to provide ventilation unless mechanical cooling or forced air circulation is provided.

(b) Windows shall be constructed of such material to contain persons within the enclosed area and to provide security from without.

(c) Windows in inspection corridors shall be designed to maximum security specifications using tool-resistant steel bars or members (equivalent to Bayley AN-1, SG-1, or SN-1, or Southern Steel Co. Type AST or SST) unless the confinement unit has a tool-resisting steel grating enclosure.

(d) Windows in the inspection corridor shall be designed to moderate security detention using mild steel bars and members (equivalent to Bayley SG-1, AN-2 or SN-2) if the confinement unit has a tool-resisting grating enclosure.

(e) Municipal lockups are the only exception to (c) and (d) if the windows are fixed, inaccessible, or they otherwise present no threat to safety or security.

(f) Windows shall have protective or security screening to prevent the passing of contraband except where approved exterior fencing is provided.

(g) Security screening shall be of a type to protect glass from damage and prevent the passage of contraband if inmates have access to windows (see Rule .3729 and .3730 of this Section).

(h) Windows shall be glazed with diffused or obscured glass or an approved synthetic material which admits light to all confinement areas if they afford a view into the confinement area from outside.

(i) Skylights shall meet the same requirements for light transmission and security windows, except that skylights need not be ventilating units.

(j) Windows in the booking area shall be of an approved type and construction to provide security and protection for the area.

Statutory Authority G.S. 153A-220; 153A-221.

.3705 SINGLE ROOM REQUIREMENTS

(a) Single room areas shall be a minimum of five feet by seven feet by eight feet.

(b) The room shall have a combination lavatory, commode and drinking fountain (see Rule .3734 of this Section).

(c) Isolation rooms shall have hot and cold water.

(d) Except for municipal lockups, a shower with hot water shall be provided for each area of isolation rooms.

(e) An approved mirror shall be installed (see Rule .3721 of this Section).

(f) No more than one approved stationary steel bunk shall be installed in the room (see Rule .3722 of this Section).

(g) Natural light shall be admitted to the room in compliance with the North Carolina State Building Code.

Statutory Authority G.S. 153A-220; 153A-221.

.3706 MULTIPLE ROOM REQUIREMENTS

(a) The capacity of multi-room units shall not exceed four inmates.

(b) The minimum room area shall be nine feet by seven feet by eight feet.

(c) The room shall have a combination lavatory, commode and drinking fountain (see Rule .3734 of this Section).

(d) The room shall have hot and cold water unless it is contained in a confinement unit with a dayroom that has hot and cold water.

(e) Except for municipal lockups, each room shall have a shower with hot and cold water.

(f) An approved mirror shall be installed (see Rule .3721 of this Section).

(g) No more than four approved stationary steel bunks shall be installed within each room.

(h) Natural light shall be admitted to the room in compliance with the North Carolina State Building Code.

Statutory Authority G.S. 153A-220; 153A-221.

.3707 DORMITORY AREA REQUIREMENTS IN JAILS

(a) The capacity of dormitories shall not exceed 16.

(b) The minimum room area for each inmate shall be 50 square feet and 400 cubic feet per inmate.

(c) Each dormitory shall have one combination commode, drinking fountain, and lavatory with hot and cold water for every eight inmates.

(d) Each dormitory shall have one shower.

(e) Each dormitory shall have an approved mirror for every eight inmates (see Rule .3721 of this Section).

(f) Each dormitory shall have a table and bench (see Rule .3723 of this Section).

(g) Natural light shall be admitted to the dormitory in compliance with North Carolina State Building Code.

Statutory Authority G.S. 153A-220; 153A-221.

**.3708 DORMITORY AREA REQUIREMENTS
IN COUNTY JAIL ANNEXES**

Dormitory areas in county jail annexes must not exceed the rated capacity as approved by the Branch.

Statutory Authority G.S. 153A-220; 153A-221.

**.3709 DAYROOM AND SAFETY VESTIBULE
REQUIREMENTS: COUNTY JAIL**

(a) Confinement units with a capacity of over four persons, except for dormitories, shall provide a dayroom of equal area to the sleeping areas.

(b) The dayroom area shall have an approved shower with hot and cold water for every 16 inmates (see Rule .3724 of this Section), and it shall have a commode, drinking fountain, and lavatory with hot and cold water.

(c) Each dayroom shall have an approved steel bench and table (see Rule .3723 of this Section) that will accommodate all of the inmates in the confinement unit.

(d) Confinement units with a capacity of over four persons, except for dormitories, shall have a safety vestibule that permits one door to be locked before the other is opened.

(e) A combination of single rooms and four-man rooms may share a common dayroom, but the capacity of a dayroom shall not exceed 24 inmates.

Statutory Authority G.S. 153A-220; 153A-221.

.3710 HOLDING AREAS

(a) Each facility with a capacity of 30 or more inmates shall have a secure holding area adjacent to the booking area where inmates can be held pending their commitment.

(b) The holding area shall be under observation by administrative jail personnel.

(c) The holding area shall be constructed of approved grill steel.

(d) The holding area shall have an approved bench and combination lavatory, commode, and drinking fountain.

Statutory Authority G.S. 153A-220; 153A-221.

.3711 OTHER AREAS

(a) Each facility shall have sufficient storage space.

(b) Each county jail shall have a medical examining room that at least is equipped with an examining table and a lavatory.

(c) Each jail with a capacity of more than 20 inmates shall have secure conference areas, and the areas shall not have recording or listening devices.

(d) All confinement areas shall have adequate floor drains in accordance with approved plans and specifications (see Rule .3735 of this Section).

Statutory Authority G.S. 153A-220; 153A-221.

.3712 LIGHTING AND VENTILATION

(a) Lighting fixtures in sleeping rooms and dayrooms shall provide at least 30 footcandles of artificial light, and they shall have diffusers designed to illuminate a horizontal area from a ceiling or wall position.

(b) Artificial lighting in the inspection and control corridors shall be at least 20 footcandles.

(c) The artificial lighting at night in the sleeping rooms shall not exceed two footcandles.

(d) The lighting levels in the non-domiciliary portions of the jail shall be within ranges recommended by the I.E.S. (Illumination Engineering Society) for the particular activity.

(e) Lighting fixtures in the inmate-occupied areas shall be of the security type, and the wiring controls and fixtures shall be inaccessible to inmates (see Rule .3727 of this Section).

(f) Confinement areas shall be heated within a range of not less than 70 degrees nor more than 75 degrees. Heat shall not be supplied by a heater or furnace that burns liquid or solid fuel.

(g) Wiring, temperature controls, and heat distribution equipment shall be inaccessible to inmates.

(h) Each facility shall provide adequate air circulation and ventilation of confinement areas in compliance with the North Carolina State Building Code.

(i) Confinement areas shall be cooled within a range of not less than 75 degrees nor more than 85 degrees.

Statutory Authority G.S. 153A-220; 153A-221.

.3713 WALLS

Walls and partitions shall be made of either reinforced concrete or masonry or the following materials:

- (1) Steel grating of either tool-resisting steel or open hearth steel as specified in the plans:
- (a) Tool-resisting steel grating shall meet the following construction requirements:
- (i) Seven-eighths of an inch or one inch diameter vertical double-ribbed round bars spaced not over four inches on center, passing through and interlocking at each intersection with 3/8 inch x 2-1/4 inches or 3/8 inch x 2-1/2 inches tool-resisting flat bars spaced on 12 inch centers for 7/8 inch bars and on 18 inch centers for one inch bars;
- (ii) Vertical framing bars shall be 3/8 inch x 2-1/4 inches or 3/8 inch x 2-1/2 inches tool-resisting flat bars.
- (b) Open hearth steel grating shall meet the following construction requirements:
- (i) Seven-eighths of an inch or one inch diameter vertical double-ribbed round bars spaced not over four inches on center, passing through and interlocking at each intersection with 3/8 inch x 2-1/4 inches or 3/8 inch x 2-1/2 inches horizontal flat bars spaced on 12 inch centers for 7/8 inch bars and on 18 inch centers for one inch bars;
- (ii) Vertical framing bars shall be 3/8 inch x 2-1/4 inches or 3/8 inch x 2-1/2 inches open hearth flat bars.
- (2) Steel plate used in a wall or ceiling shall meet the following construction requirements:
- (a) not less than 3/16 inch open hearth steel, or
- (b) not less than 1/4 inch tool-resisting steel.

Statutory Authority G.S. 153A-220; 153A-221.

.3714 SLIDING DOORS

- (a) Sliding doors shall be made of the same weight and quality of grating or plate as the confinement area fronts or wall in which they are installed.
- (b) Sliding doors shall be approximately two feet x six feet, three inches, and shall be hung from the top by a plate door carriage.
- (c) The door carriage shall have two hardened steel spindles on which will be mounted two needle-bearing or two S.K.F. or approved equal ball-bearing solid steel machined wheels.
- (d) The door carriage shall be enclosed in a covered box of the prescribed type.

Statutory Authority G.S. 153A-220; 153A-221.

.3715 SWINGING DOORS

- (a) Plate doors installed in plate walls shall be made of steel that is at least the same quality and thickness as specified for the wall in which the door opening is installed.
- (b) Plate doors installed in concrete or masonry walls shall be made of material not lighter than 3/16 inch thick open hearth steel plate framed and stiffened with angles, bars, or other shapes and securely hung to door frames made of structural or bent plate channel at least 3/16 inch thick.
- (c) The depth of plate door frame shall equal the thickness of the wall.
- (d) Grating doors installed either in grating, plate walls, or concrete or masonry walls shall be constructed of tool-resisting steel or open-hearth steel as specified by the plans.

Statutory Authority G.S. 153A-220; 153A-221.

.3716 ACCESS DOORS AND PANELS

- (a) Swinging access doors to pipe and utility spaces shall be at least one foot, eight inches x four feet in size and made of 3/16 inch steel plate.
- (b) Removable access panels shall be made of 3/16 inch open-hearth steel plate and shall be large enough to permit entrance.
- (c) Access panels shall be secured to the wall either by 3/8 inch hex-head screws tapped into the panel opening frame and spaced not more than eight inches on center, or they shall be secured by metal lugs at the bottom of the panel and a deadlock at the top, both of which shall be mounted at the back side of the panel to provide further security.

Statutory Authority G.S. 153A-220; 153A-221.

.3717 PRISON KEY-OPERATED LOCKS

- (a) Locking swinging doors shall use prison deadlocks with heavy multiple tumblers. The lock mechanism shall be housed in a lock case made of forged steel not less than 5-1/2 inches x 1-3/8 inches in size.
- (b) Manually-operated sliding doors shall be locked by a heavy multiple tumbler that uses a snap and automatic deadlock. The lock mechanism shall be housed in a lock case made either of strong steel or malleable iron or steel not less than 10 inches x 3-1/2 inches x 1-3/8 inches in size.
- (c) Food passes and shutters, where specified, shall be locked by a heavy multiple tumbler that uses a prison type snap or spring. The food pass lock shall be mounted to prevent food or other matter from coming in contact with the lock.

Statutory Authority G.S. 153A-220; 153A-221.

.3718 HINGES

Swinging doors shall be hung on hinges designed for jail use.

Statutory Authority G.S. 153A-220; 153A-221.

.3719 OBSERVATION AND SPEAKING PANELS

(a) Observation and speaking panels shall be mounted in plate or masonry walls where shown on plans, and they shall be designed to prevent the passage of contraband.

(b) Observation and speaking panels shall be made either of polished stainless steel, chromium plated steel, brass, or aluminum.

(c) Glass in observation panels shall be bullet-proof and at least 7/8 inch thick.

Statutory Authority G.S. 153A-220; 153A-221.

.3720 FOOD PASSES

(a) The food pass in plate walls shall be approximately 12 inches wide x 4-1/2 inches high. Hinged food pass shutters shall be about 13 inches wide and six inches high and they shall be made of 3/16 inch open-hearth steel plate. The shutter shall form a shelf when in open position and it shall overlap the opening around the edges.

(b) The food pass in grating walls shall be approximately 12 inches wide x 4-1/2 inches high, and a shelf 5 inches x 12 inches shall be riveted or welded to the bottom of the opening to facilitate the passage of food.

Statutory Authority G.S. 153A-220; 153A-221.

.3721 MIRRORS

(a) Mirrors shall be approximately 8 inches x 9-1/2 inches in size when provided.

(b) Mirrors shall be highly polished stainless steel or chrome plated steel, and they shall be attached securely to the wall.

Statutory Authority G.S. 153A-220; 153A-221.

.3722 BUNKS

(a) Bunks shall be six feet, three inches long and not less than two feet, one inch nor more than two feet, three inches wide.

(b) The bottoms of bunks shall be 16-gauge sheet steel perforated with one inch to two inch holes for ventilation.

(c) Bunks shall be framed on the long side by angles not less than 1-1/2 inches x 2 inches x 3/16 inch in size and on the ends by 3/16 inch bent plate brackets.

(d) The required parts shall be welded together to form a one-piece bunk assembly with end brackets.

(e) The bunk brackets shall be securely fastened to cell walls.

(f) When one bunk is placed above another, the lower bunk shall be approximately 15 inches and the upper bunk approximately 50 inches above the floor.

(g) In dormitories, double bunks with approved bottoms and frames shall be securely attached either to the floor or the wall.

Statutory Authority G.S. 153A-220; 153A-221.

.3723 TABLES, BENCHES AND SEATS

(a) One-piece bench and table units shall be installed as shown on the plans, and they shall be welded securely to an adjacent steel wall and anchored securely to the floor.

(b) The tops of tables and benches shall be made of at least 10-gauge sheet steel neatly flanged around the edges.

(c) Table legs and other supports shall be made of properly designed and reinforced materials.

Statutory Authority G.S. 153A-220; 153A-221.

.3724 SHOWER STALLS

(a) The dimensions of showers shall be at least 30 inches x 30 inches x 7 feet.

(b) Shower stalls shall be constructed of either concrete, masonry, at least 1/8 inch galvanized steel plate, heavy gauge aluminum plate, or heavy gauge stainless steel according to approved plans and specifications.

(c) The shower stall shall be attached to the wall of the dayroom.

(d) The floor of the shower stall shall be approximately eight inches above floor level and it shall slope to the floor shower drain.

(e) A curb that is approximately four inches above the shower floor shall extend across the front of the shower stall. The top of the curb shall have a smooth edge.

(f) The shower head and the push-button valve assembly shall be vandal proof, and the metering valve and temperature balance mechanism shall be concealed.

Statutory Authority G.S. 153A-220; 153A-221.

.3725 REMOTE CONTROL LOCKING MECHANISMS

(a) Remote control locking and operating mechanisms for fully selective sliding doors shall be electric, electrical-mechanical, mechanical, or gang locking.

(b) Remote control locking mechanisms shall be designed and manufactured specifically for corrections use and shall be installed according to plans.

Statutory Authority G.S. 153A-220; 153A-221.

.3726 MATERIAL TESTS

(a) Tool-resisting materials that are included in jail equipment shall withstand the following tests:

(1) A load test of not less than 6,000 lbs. applied at the midpoint of heat-treated 7/8 inch or one inch diameter double-ribbed round tool-resisting bar resting horizontally on two supports spaced 12 inches apart. The load shall be applied with a blunt-end rounded to a radius of approximately 1/4 inch on the edge which is in contact with the tested bar. The bar shall not assume a permanent set in excess of 1/4 inch and it shall not break under the load.

(2) Tool-resisting 7/8 inch or one inch steel bars shall not be severed within six hours by using six hacksaw blades, and it shall not be pierced by using six 1/8 inch bits, used either in a hand-operated or motor-driven drill. The hacksaw blades and bits in this test shall be the standard type found in institutions.

(b) Open-hearth steel shall be the type produced for corrections use and it shall have a chemical composition that is within the limits adopted by the Association of American Steel Manufacturers for open-hearth bars and shapes.

Statutory Authority G.S. 153A-220; 153A-221.

.3727 PROTECTION EQUIPMENT FOR ELECTRICAL LIGHTS

(a) Each facility shall adequately protect electric lights in cells from damage by inmates.

(b) Fittings shall be either covered with 3/8 inch tempered lenses for diffusing light or protected with steel wire.

(c) Steel plate brackets shall be provided for mounting light receptacles.

Statutory Authority G.S. 153A-220; 153A-221.

.3728 DOOR PULLS

(a) Swinging plate security doors shall have at least six inch loop pulls of polished aluminum alloy, polished bronze or chrome plated bronze.

(b) Door pulls shall be secured to doors by security-type patch head screws, spanner screws, or hexagon nuts.

Statutory Authority G.S. 153A-220; 153A-221.

.3729 WIRE WINDOW GUARDS

(a) Wire window guards shall cover windows as called for in the plans.

(b) Window guards shall be made of 11-gauge steel mesh, woven three mesh to the inch, and they shall be framed with flat steel bars.

(c) Hinges, padlocks, hasps, and staples shall be furnished for window guards.

Statutory Authority G.S. 153A-220; 153A-221.

.3730 SECURITY SCREENS

Security screens shall be installed as indicated on the construction plans, and they shall be made of steel, stainless steel, or extruded aluminum.

Statutory Authority G.S. 153A-220; 153A-221.

.3731 INSECT SCREENS AND DOORS

Insect screens and doors shall be provided as indicated on the plans, and they shall be made of extruded aluminum, stainless steel, bronze, or steel.

Statutory Authority G.S. 153A-220; 153A-221.

.3732 KEY CABINET

(a) A secure key cabinet shall be provided as shown on the plans, and it shall be made of not less than 10-gauge open-hearth steel plate.

(b) The door to the key cabinet shall be hung securely on two steel pin hinges and locked with a heavy multiple tumbler security-type deadlock.

(c) The key cabinet shall have shelves, gun racks, and key hooks as required.

Statutory Authority G.S. 153A-220; 153A-221.

.3733 PLUMBING

All plumbing shall be in accordance with the North Carolina State Plumbing Code and the approved plans in effect at time of construction.

Statutory Authority G.S. 153A-220; 153A-221.

.3734 PLUMBING FIXTURES

(a) Plumbing fixtures shall be furnished and installed as specified on the approved plans.

(b) The plumbing construction shall withstand damage attempted without tools, and the plumbing materials shall offer maximum resistance to wear while providing sanitation in the area used.

(c) Vitreous china lavatories shall have an integral spout and drinking nozzle with a mouth guard.

(d) Lavatories shall have an integral soap dish and outlet.

(e) Lavatories shall have self-closing operating buttons.

(f) Vitreous china water closets shall be floor mounted and shall have an integral seat and base with a 1-1/2 inch back spud.

(g) The flush valve shall be tamper proof and self-closing, and siphon jet action shall be used.

(h) Commode, lavatory and drinking fountain combination units shall be made of welded stainless steel or cast aluminum except that galvanized steel shall be allowed for cabinet reinforcement.

(i) The fixture shall have tamper-proof, chrome-plated self-closing valves and a combination filler, drinking bubbler with a mouth guard and vacuum flow control.

(j) The water closet bowl shall have an integral seat and back outlet.

(k) The lavatory top, bowl, and closet bowl in the stainless steel fixture shall be 16-gauge or heavier with an 11-gauge or heavier liner.

(l) Surfaces in the stainless steel unit shall be satin finish, except the bowl shall have a high luster finish.

(m) The fixture shall be anchored through the wall with concealed bolts.

(n) A vacuum breaker shall be incorporated and a water shutoff shall be installed outside the room or dayroom.

(o) The fountain bubbler shall produce a water flow on a jet angle and the protector shall be above the water outlet to prevent the mouth from touching it. The protector shall be strong enough that the average person cannot change its configuration without tools.

Statutory Authority G.S. 153A-220; 153A-221.

.3735 FLOOR DRAINS

Floor drains that are accessible to inmates shall be fitted with tamper-resistant covers.

Statutory Authority G.S. 153A-220; 153A-221.

.3736 GENERAL PROVISIONS REGARDING EQUIPMENT INSTALLATION

(a) All steel equipment, except tool-resisting bars embedded in concrete floors and other such parts that are enameled or plated, shall have a prime coat applied in the fabricating shop.

(b) Paint shall be of good metallic grade.

(c) All riveting and welding connected with the installation of security equipment shall meet specifications indicated by the architect.

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .3800 - CONSTRUCTION STANDARDS FOR EXISTING STATE-FUNDED SATELLITE JAIL/WORK RELEASE UNITS

.3801 APPLICABILITY

Existing state-funded satellite jail/work release units for which final working drawings have been approved prior to the effective date of this rule shall continue to be governed by the existing construction standards which are now in this Section. These same standards shall apply to new jails which have had final working drawings approved by the Branch prior to the effective date of this Rule. Existing state-funded satellite jail/work release units or new state-funded satellite jail/work release units which have had final working drawings approved by the Branch prior to the effective date of this Rule may use the standards found in Section .3400 in lieu of those in Section .3800 if they choose.

Statutory Authority G.S. 153A-220; 153A-221.

.3802 CONFINEMENT UNIT

Each satellite jail/work release unit shall include:

- (1) No more than 24 inmates per sleeping area;
- (2) No less than 35 square feet per inmate devoted to sleeping area only;
- (3) One shower per ten inmates, one water closet per six inmates, one sink per six inmates and one water fountain per ten inmates. Showers and toilet facilities shall be designed to provide maximum privacy (line of sight) while not interfering with the capability of the jail staff to complete supervision rounds.
- (4) A telephone hookup or other arrangements provided within the area;
- (5) A dayroom/activity room for each unit separated from the sleeping area and of a size to provide a minimum of 15 square feet per inmate;
- (6) A dayroom/activity room designed to allow a variety of activities to take place and have:
 - (a) sufficient seating and tables for each inmate in each confinement unit;
 - (b) natural light;
 - (c) artificial lighting at 30 footcandles in reading areas which may be reduced during sleeping hours;
 - (d) access to toilet, sink with hot and cold water, and drinking fountain;
 - (e) visual control by staff to observe entire area from point of entrance;
 - (f) direct voice contact with continuously staffed post and/or central control center.

- (7) Single occupancy sleeping areas when called for in the design. Each single occupancy area shall have:
- (a) a minimum of 35 square feet of floor space;
 - (b) a minimum floor dimension of seven feet;
 - (c) a toilet, sink, and drinking fountain;
 - (d) a bed frame;
 - (e) artificial lighting of 30 footcandles which can be reduced during sleeping hours;
 - (f) natural light provided by window with exterior exposure;
 - (g) direct voice contact with staff post and/or central control center.

Statutory Authority G.S. 153A-220; 153A-221.

.3803 PROGRAMMING AREAS

Each satellite jail work release unit, when located in a separate facility from a maximum confinement unit shall have:

- (1) A general visitation area with:
 - (a) a public entrance to the facility;
 - (b) an entry located to permit direct observation and control by staff;
 - (c) storage facilities for visitors' coats and packages;
 - (d) a sufficient number of stations to accommodate visitation needs;
 - (e) seating for both inmates and visitors.
- (2) A confidential attorney visitation area that:
 - (a) is separate and distinct from the general visitation area;
 - (b) permits passage of papers and documents;
 - (c) provides seating with table desk for writing for visitors and inmates;
 - (d) provides artificial lighting of 30 footcandles;
 - (e) permits contact visiting;
 - (f) provides for visual monitoring, but not hearing by staff;
 - (g) provides for visitors to contact staff if needed.
- (3) If the facility is not a "work release" only facility, a medical area designed:
 - (a) to prohibit access by unauthorized personnel;
 - (b) to have locked storage for equipment, supplies, medications, and records;
 - (c) for equipment approved by the jail physician including a sink, toilet, shower, examining table, nurses and physicians work station(s), telephone, and direct contact with the central control area.
- (4) A food service that meets the sanitation requirements of the Commission for Health Services 10 NCAC 10A, Section .0100, with adequate storage and food preparation areas.

- (5) A laundry service (either contracted for or on premises).
- (6) In a facility which is not a "work release" only facility, recreational facilities with:
 - (a) an area designed for vigorous physical activities, such as volleyball, basketball, etc.;
 - (b) equipment storage area;
 - (c) staff observation post for all areas;
 - (d) access to areas controlled by staff.
- (7) A commissary through contract services or built on premises.

Statutory Authority G.S. 153A-220; 153A-221.

.3804 ADMINISTRATION AREA

Each satellite jail work release unit shall have an administrative area which shall provide:

- (1) adequate space for administrative offices accessible to the public;
- (2) clerical support areas;
- (3) record storage areas;
- (4) space for information resources, report writing, and training materials;
- (5) conference or training area;
- (6) space for unit administrator and support staff personnel.

Statutory Authority G.S. 153A-220; 153A-221.

.3805 CONSTRUCTION MATERIALS FOR SATELLITE JAIL/WORK RELEASE UNITS

Traditional building materials may be used where safety will not be jeopardized, taking into consideration the type and/or level of security described in the operations program developed by the local authorities.

Statutory Authority G.S. 153A-220; 153A-221.

.3806 MECHANICAL SYSTEMS

Mechanical systems shall:

- (1) Provide heating, ventilation, and air conditioning to meet the requirements of the N.C. Building Code;
- (2) Have master controls for electrical, plumbing, heating, and air conditioning, which are inaccessible to inmates;
- (3) Have master cutoff controls for electrical and water supplies to each confinement area (either single cells or dormitory type areas);
- (4) Have capability of maintaining temperatures in the confinement areas within 68 degrees Fahrenheit minimum in the heating season and a maximum of 85 degrees Fahrenheit during the non-heating season.

Statutory Authority G.S. 153A-220; 153A-221.

.3807 GENERAL REQUIREMENTS

In addition to the rules in this Section, the minimum secure unit shall be designed to:

- (1) allow access for emergency equipment (e.g., fire hoses, stretchers) provided at appropriate entrances;
- (2) have auxiliary power and emergency lighting available;
- (3) have vehicle parking for both public and facility staff and be so designed to prevent unauthorized persons from entering the security perimeter.

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .3900 - MUNICIPAL LOCKUPS

.3901 DEFINITIONS

The following definitions shall apply in 10 NCAC 3J .3900:

- (1) "Booking area" is a secure place where a person is admitted to a jail and procedures such as searching, fingerprinting, photographing, health screening, and collecting personal history data occur.
- (2) "Branch" is the Jail and Detention Branch of the Division of Facility Services, Department of Human Resources.
- (3) "Cell" is any confinement unit.
- (4) "Cellblock" is a separate and identifiable grouping of cells.
- (5) "Communicable disease or condition" is an illness or condition as defined in G.S. 130A-133 which is hereby adopted by reference pursuant to G.S. 150B-14(c).
- (6) "Confinement unit" is a single segregation cell, a single cell, a multiple occupancy cell or a dormitory.
- (7) "Contraband" is any item that a person is not authorized to possess in the lockup because it is a violation of law or a violation of rules.
- (8) "Department", unless otherwise specified, is the North Carolina Department of Human Resources.
- (9) "Division", unless otherwise specified, is the Division of Facility Services of the North Carolina Department of Human Resources.
- (10) "Emergency medical problem" is a serious medical need, including severe bleeding, unconsciousness, serious breathing difficulties, head injury, severe pain, suicidal behavior or severe burns, that requires immediate medical attention and that cannot be deferred until the next scheduled sick call or clinic.
- (11) "Footcandle" is the amount of light thrown on a surface one foot away from the light source. It is a unit for measuring the intensity of illumination.
- (12) "Governing body" refers to the governing body of a municipal government.
- (13) "Health screening" is a procedure for each newly-admitted inmate that combines visual observation with an interview to obtain relevant information about the inmate's physical and mental health.
- (14) "Inmate" is any person, whether pretrial, unsentenced, or sentenced, who is confined in a lockup.
- (15) "Inmate processing area" is a secure area through which inmates enter and exit, and it may be combined with the booking area.
- (16) "Institutional-Restrained" is a Building Code occupancy classification used for buildings in which persons are restrained under lock and key or other security measures which render them incapable of self-preservation due to the security measures not being under their direct control.
- (17) "Medical record" is a record of medical problems, examinations, diagnoses and treatments.
- (18) "Multiple occupancy cell" is a cell designed to house up to four inmates.
- (19) "Municipal lockup" is a facility designated for the confinement of persons for periods not to exceed 24 hours, pending release or transfer to the county jail. The facility is authorized, maintained, and administered by municipal officials.
- (20) "Officer" is a person, whether sworn or unsworn, who is involved in the supervision, control, or custody of inmates.
- (21) "Operations manual" is a set of written policies and procedures for the operation of a lockup in compliance with state and federal law and the minimum standards for the operation of municipal lockups.
- (22) "Qualified medical personnel" are persons who provide medical services to inmates and who are licensed, certified, registered, or approved, in accordance with state law. It includes persons who provide limited medical services under supervision as permitted by law.
- (23) "Registered dietician" is a specialist in the field of nutrition, dietetics and food system management who maintains current registration with the Commission on Dietetic Registration of the American Dietetic Association.
- (24) "Residential" is a Building Code occupancy classification used for buildings which

provide sleeping accommodations for the occupants and in which the egress doors are unlocked at all times thereby providing free movement to the building exterior from occupied areas.

- (25) "Sally port" is an enclosed entry and exit area used either for vehicular or pedestrian traffic with gates or doors at both ends, only one of which opens at a time.
- (26) "Secretary", unless otherwise specified, is the Secretary of Department of Human Resources.
- (27) "Security perimeter" is the outer portion of a lockup that provides for the secure confinement of inmates and that prevents the entry of unauthorized persons or contraband.
- (28) "Security vestibule" is a defined space that provides security by using two or more doors, with each door able to operate independently, and that permits an officer to observe those who pass through the space.
- (29) "Single cell" is a cell designed to house one inmate.
- (30) "Tamper resistant" means designed to prevent damage, destruction or interference by inmates.
- (31) "View panel" is a transparent panel.

Statutory Authority G.S. 153A-221.

.3902 APPLICABILITY - CONSTRUCTION

(a) New Municipal Lockups - The construction standards established in this Section shall apply to all municipal lockup construction for which the final working drawings are approved by the Branch after the effective date of this Rule.

(b) Existing Municipal Lockups - Existing municipal lockups for which final working drawings have been approved prior to the effective date of these rules shall continue to be governed by the existing construction standards which are now in Section .3700 of this Subchapter and the same standards shall apply to new municipal lockups which have had final working drawings approved by the Branch prior to the effective date of this Rule. Existing municipal lockups or new municipal lockups which have had final drawings approved by the Branch prior to the effective date of this Rule may use the standards found in this Section in lieu of those in Section .3700 of this Subchapter if they choose.

(c) Additions - The construction standards established in this Section shall apply to any construction that adds square footage to the building and for which the final working drawings are approved after the effective date of this Rule.

(d) Alterations or Repairs - When alterations or repairs are made to an existing municipal lockup building which effect its structural strength, exits, fire hazards, electrical systems, mechanical systems, or sanitary conditions, such alterations or repairs shall comply with the standards for new construction established in this Section. Unaltered portions of the building shall only be required to comply with the new construction standards indicated in this Section under the circumstances specified in Paragraphs (e) - (g) of this Rule.

(e) Extensive Annual Alterations or Repairs - If, within any 12 month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing municipal lockup, such municipal lockup shall conform to the construction standards for new municipal lockups established in this Section.

(f) Reconstruction After Damage - If an existing municipal lockup is damaged by fire or otherwise in excess of 50 percent of the then physical value of the building at the time of damage, the municipal lockup shall be reconstructed in conformance with the construction standards for new municipal lockups established in this Section.

(g) Physical Value - For the purpose of this Rule, the physical value of the municipal lockup building shall be determined by the local building inspection department.

Statutory Authority G.S. 153A-221.

.3903 REQUIREMENT FOR OPERATIONS MANUAL

Within 12 months after the effective date of this Rule, the chief of police or his designee responsible for operating the municipal lockup shall develop written policies and procedures that describe how the lockup will be operated.

Statutory Authority G.S. 153A-221.

.3904 PURPOSE OF OPERATIONS MANUAL

The purpose of the operations manual is to ensure the smooth and efficient operation of the municipal lockup, and therefore it shall be detailed enough to guide officers in completing their assigned duties. The operations manual shall be available to all officers, and each officer shall be familiar with the manual.

Statutory Authority G.S. 153A-221.

.3905 CONTENTS OF OPERATIONS MANUAL

(a) The operations manual shall include written policies and procedures that address the following areas:

- (1) administration and management;
- (2) admissions, transportation and release;
- (3) classification;
- (4) security and supervision;
- (5) inmate rules and discipline;
- (6) management of special inmates;
- (7) legal rights of inmates;
- (8) health services;
- (9) food services;
- (10) access to legal representation;
- (11) sanitation; and
- (12) emergency plans.

(b) The most recent editions of the following references are available as guides for developing policies and procedures:

- (1) Appalachian State University, Model Policies and Procedures Manual for North Carolina Jails;
- (2) American Correctional Association, Standards for Adult Local Detention Facilities;
- (3) American Correctional Association, Standards for Small Jails;
- (4) National Commission on Correctional Health Care, Standards for Health Services in Jails.

These references shall be available for inspection or loan from the Branch. Consultation and technical assistance shall be available from the Branch. The Branch can also provide information regarding outside agencies with additional resources for developing policies and procedures.

Statutory Authority G.S. 153A-221.

.3906 REVIEW OF MANUAL

The operations manual shall be reviewed and updated at least once each year by the police chief.

Statutory Authority G.S. 153A-221.

.3907 CLASSIFICATION SYSTEM

Each municipal lockup shall have a written classification procedure for the placement and housing of inmates. Within the limitations imposed by the design and capacity of the lockup, the procedure shall assign inmates to confinement units that best meet their individual needs and that reasonably protect the inmate, other inmates, the jail staff, and the public.

Statutory Authority G.S. 153A-221.

.3908 FEMALE INMATES

Male and female inmates shall not be placed in the same confinement unit, and, in addition female inmates shall be housed out of sight of male inmates.

Statutory Authority G.S. 153A-221.

.3909 CONFINEMENT OF MALES UNDER 18 YEARS OF AGE

Male inmates under 18 years of age shall be confined in separate sleeping quarters from adult inmates.

Statutory Authority G.S. 153A-221.

.3910 CONFINEMENT OF JUVENILES UNDER AGE 16

Any juvenile under age 16 who is transferred to superior court for trial as an adult and who is ordered held in the jail pursuant to G.S. 7A-611 shall be confined in a holdover facility where the juvenile cannot converse with, see, or be seen by the adult inmates.

Statutory Authority G.S. 153A-221.

.3911 DISCRIMINATION IN HOUSING ASSIGNMENTS

Housing assignments shall not be made on the basis of race, color, creed, national origin, or political belief.

Statutory Authority G.S. 153A-221.

.3912 EXITS

Each municipal lockup shall have readily accessible emergency exits in compliance with the North Carolina State Building Code in order to permit the prompt evacuation of inmates and staff during an emergency. Egress doors in jails which are classified as "Residential Occupancy" by the N.C. State Building Code shall remain unlocked at all times thereby permitting free movement to the building exterior from occupied areas.

Statutory Authority G.S. 153A-221.

.3913 FIRE EQUIPMENT

Each municipal lockup shall provide the following emergency fire equipment:

- (1) fire extinguishers that meet all of the requirements in National Fire Prevention Association pamphlet number 10 which is hereby adopted by reference pursuant to G.S. 150B-14(c), and
- (2) smoke detection equipment that meets the requirements of the North Carolina State Building Code.

Statutory Authority G.S. 150B-14 (a) (1); 150B-14 (c); 153A-221.

.3914 FIRE PLAN

(a) Each municipal lockup shall have a written plan for the evacuation and control of inmates in the event of a fire. The plan shall include at least quarterly fire drills, and records shall be made of the fire drills and retained. The actual movement of inmates to other areas or outside the building is not required.

(b) Evacuation routes shall be posted or otherwise clearly marked throughout the municipal lockup.

(c) The police chief shall request in writing that the local fire department or fire marshal inspect the municipal lockup and review the fire plan at least once each year.

Statutory Authority G.S. 153A-221.

.3915 MATTRESSES

Mattresses shall be of fire resistive and nontoxic construction.

Statutory Authority G.S. 153A-221.

.3916 KEYS

Each municipal lockup shall have a key control system that includes the following elements:

- (1) a key control center that is secure and inaccessible to unauthorized persons at all times;
- (2) a set of duplicate keys to be stored in a safe place that is inaccessible to unauthorized persons at all times;
- (3) an accounting procedure for issuing and returning keys; and
- (4) a system of keys and matching locks that are color-coded and marked for identification by touch.

Statutory Authority G.S. 153A-221.

.3917 GENERAL SECURITY REQUIREMENTS

Each municipal lockup shall meet the following security requirements:

- (1) provide for the secure confinement of inmates from the time of their passage through the security perimeter until release;
- (2) prevent the passage of contraband;
- (3) prevent unauthorized contact between inmates and person from outside the lockup;
- (4) provide a ground-level perimeter exterior that is well lighted; and
- (5) provide a communications link with outside agencies for use in emergencies.

Statutory Authority G.S. 153A-221.

.3918 SUPERVISION

(a) Officers shall make supervision rounds and directly observe each inmate in person at least twice per hour on an irregular basis. The supervision rounds shall be documented. If remote electronic monitoring is used to supplement supervision, it shall not be substituted for supervision rounds and direct visual observation.

(b) Officers shall maintain voice or visual contact with all inmates at all times, and it shall be through either direct observation or by means of electronic surveillance.

(c) There shall be more frequent observation of inmates who are assaultive, suicidal, intoxicated, mentally ill or who have other special needs or problems.

(d) Officers shall remain awake at all times.

(e) Officers shall not be assigned other duties that would interfere with the continuous supervision of inmates.

(f) Female officers shall be on duty when female inmates are confined.

(g) The police chief shall develop a contingency plan for the supervision and control of inmates during an emergency, and it shall provide for the addition of extra personnel.

(h) Inmates shall not be allowed to supervise or assume any control over other inmates.

Statutory Authority G.S. 153A-221.

.3919 SANITATION

Each municipal lockup shall comply with the North Carolina Commission for Health Services rules governing sanitation as codified in 10 NCAC 10A Section .0100 and which are hereby adopted by reference pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 153A-221.

.3920 MATTRESSES AND BEDDING

Mattresses, sheets, and blankets that are clean and in good repair shall be supplied to all inmates except those not housed overnight. Sheets shall be exchanged at least once a week. Mattresses shall meet the following requirements:

- (1) Mattresses shall comply with Commission for Health Services rules on sanitation, 10 NCAC 10C, Rules .0312 - .0326 and G.S. Chapter 130A-273 which are hereby adopted by reference pursuant to G.S. 150B-14(c).
- (2) Mattresses shall be not less than four inches thick and shall be the same length and width as the lockup bunks.

- (3) Mattresses shall not have any metal, plastic, or other rigid framing component.
- (4) Mattress ticking shall be durable and water repellent.

Statutory Authority G.S. 153A-221.

.3921 FOOD SERVICE

(a) In municipal lockups that purchase meals from an outside provider, a written contract shall require the provider to meet the applicable standards in this Section.

(b) Inmates shall not be used as the sole source of personnel for the preparation or service of any meal.

Statutory Authority G.S. 153A-221.

.3922 MEAL SERVICE

(a) Each jail shall provide at least three meals for inmates, two of which must be hot, at regular times during each 24-hour period. There shall be not more than 14 hours between the evening meal and breakfast. An inmate shall be provided a meal if he is in the municipal lockup during a normal meal hour.

(b) Food shall be served to inmates on individual serving trays. Eating utensils and condiments shall be provided.

(c) While food is being transported, it shall be covered to prevent contamination and to maintain appropriate serving temperatures.

(d) Food shall never be used as a reward or punishment.

(e) Each municipal lockup shall keep a daily record of the number of meals served. In addition, each municipal lockup shall record the number of modified diets served at each meal, along with the name of each inmate and the type of modified diet that he or she received.

Statutory Authority G.S. 153A-221.

.3923 FOOD AND NUTRIENT REQUIREMENTS

(a) The average nutrient content of weekly menus shall meet the Recommended Dietary Allowances of the National Academy of Sciences which are hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Daily menus shall include the following:

- (1) Milk Group: Two servings;
- (2) Fruit Group: Two servings, one of which shall be citrus;
- (3) Vegetable Group: Three servings;
- (4) Meat or Protein Group: Two servings;
- (5) Cereal or Bread Group: Four servings of whole grain or enriched products; and

(6) Calories: 2,100 - 2,500.

(c) For all pregnant women, children and teenagers, increase the milk allowance to four cups per day.

Statutory Authority G.S. 153A-221.

.3924 MENUS

(a) Menus shall be prepared in consultation with a registered dietician.

(b) Menus shall be written and portion sizes shall be specified.

(c) Menus shall be dated and posted one week in advance.

(d) Menus shall be served as written to inmates in the municipal lockup. Any necessary substitutions shall be of comparable nutritional value, and a written record of substitutions shall be kept.

(e) The same menu shall not be served at lunch and dinner on the same day.

(f) Dated menus and records of any substitutions shall be retained for three years.

Statutory Authority G.S. 153A-221.

.3925 MODIFIED DIETS

(a) Modified diets shall be provided if prescribed by appropriate medical or dental personnel.

(b) Modified diets shall be provided when reasonably possible to accommodate the sincerely held religious beliefs of an inmate.

(c) Written menus for modified diets shall be prepared in consultation with a registered dietician.

(d) Modified diets shall be served as written. Any necessary substitutions shall be of comparable nutritional value, and a written record of substitutions shall be kept. Dated menus of modified diets and records of any substitutions shall be retained for three years.

(e) Each municipal lockup shall maintain a current list of inmates requiring modified diets, and it shall be posted for use by staff.

Statutory Authority G.S. 153A-221.

.3926 MEDICAL PLAN

(a) A written medical plan shall be developed in compliance with G.S. 153A-225 and it shall be available for ready reference by municipal lockup personnel. The medical plan shall include a description of the health services available to inmates.

(b) The written plan shall include policies and procedures that address the following areas:

PROPOSED RULES

- (1) Health screening of inmates upon admission;
- (2) Routine medical care;
- (3) The handling of inmates with chronic illnesses or known communicable diseases or conditions;
- (4) Administration, dispensing and control of prescription and non-prescription medications;
- (5) Handling emergency medical problems, including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health;
- (6) Maintenance and confidentiality of medical records;
- (7) Privacy during medical examinations and conferences with qualified medical personnel.

(c) Inmate health complaints must be solicited daily by a health professional or by an officer. Qualified medical personnel shall be available to evaluate the medical needs of inmates. A written record shall be maintained of the request for medical care and the action taken.

(d) Inmates shall not perform any medical functions in the lockup.

(e) The medical plan shall be reviewed annually.

Statutory Authority G.S. 153A-221.

.3927 HEALTH SCREENING FORM

The health screening form completed upon admission by an officer shall be available to municipal lockup officers, and a copy of the form shall be kept in any medical file that is maintained for inmates.

Statutory Authority G.S. 153A-221.

.3928 LOGS OF ADMISSIONS AND RELEASES

Municipal lockups shall keep a log that contains at least the following information on each inmate admitted:

- (1) Inmate name,
- (2) Date and time inmate is admitted and released,
- (3) Charge,
- (4) Condition of release, and
- (5) If not released, place to which inmate was transferred.

Statutory Authority G.S. 153A-221.

.3929 MONTHLY REPORT OF MUNICIPAL LOCKUPS

The police chief shall complete a monthly report on Form DIIR-JDS-1 and send it to the Branch no later than the tenth day of the following month.

Statutory Authority G.S. 153A-221.

.3930 REPORT OF DEATH

The report of an inmate death required by G.S. 153A-225 shall be submitted to the Branch.

Statutory Authority G.S. 153A-221.

.3931 CONSULTATION AND TECHNICAL ASSISTANCE

Consultation and technical assistance in planning a new municipal lockup shall be available through the Branch.

Statutory Authority G.S. 153A-221.

.3932 COMPLIANCE REVIEW AND APPROVAL

(a) The governing body shall submit copies of the following to the Branch before it begins construction of a new municipal lockup and before it makes additions or alterations to an existing municipal lockup as defined by the North Carolina State Building Code:

- (1) three sets of schematic drawings and outline specifications;
- (2) three sets of preliminary working drawings or design development drawings and outline specifications;
- (3) three sets of completed final working drawings and specifications.

(b) Upon receipt of the drawings and specifications at each stage, the Branch shall send one set each to the following for their review and approval: the Department of Insurance to insure compliance with the North Carolina State Building Code, and the Division of Environmental Health in the Department of Environment, Health, and Natural Resources to insure compliance with the rules governing sanitation as codified in 10 NCAC 10A, Section .0100 and which are hereby adopted by reference pursuant to G.S. 150B-14(e). The Branch shall keep one set for its own review and approval to insure compliance with the minimum standards for the operation and construction of municipal lockups as contained in this Subchapter.

Statutory Authority G.S. 153A-221.

.3933 SPECIFIC CONSTRUCTION REQUIREMENTS

(a) Municipal lockups restrain inmates under lock and key within a building and therefore shall

meet the requirements of the North Carolina State Building Code for "Institutional Occupancy - Restrained".

(b) The construction materials in all municipal lockups shall be sufficient to provide the degree of security required for the area in which they are used.

Statutory Authority G.S. 153A-221.

.3934 CENTRAL CONTROL STATION

In municipal lockups that have a central control station, the station shall:

- (1) be strategically located and equipped to regulate and monitor the movement of inmates and officers;
- (2) have a security vestibule at its entrance;
- (3) have direct two-way voice communication with all confinement units;
- (4) have direct two-way voice communication with all officers as needed to maintain safety and security;
- (5) be equipped with a release mechanism to open all confinement unit doors in an emergency;
- (6) have a toilet and sink.

Statutory Authority G.S. 153A-221.

.3935 ELEVATORS

Elevators that open into the municipal lockup shall be secure and shall be under the control and observation of officers.

Statutory Authority G.S. 153A-221.

.3936 INMATE PROCESSING AREA

Each municipal lockup that performs a booking and release function shall have an inmate processing area with access to the following:

- (1) a booking area that includes space for photographing and fingerprinting inmates and a telephone for making local and long-distance calls; and
- (2) a sobriety testing area.

Statutory Authority G.S. 153A-221.

.3937 VISITATION AREAS

Each municipal lockup shall provide a confidential attorney visitation area that shall:

- (1) permit contact between the inmate and attorney;
- (2) be separate and distinct from the general visitation area;
- (3) provide seating and a writing table for the inmate and attorney;

- (4) permit only visual monitoring by the officers;
- (5) provide a way for the attorney to contact officers if needed; and
- (6) provide a minimum of 30 footcandles of artificial light.

Statutory Authority G.S. 153A-221.

.3938 OTHER AREAS

Each municipal lockup that does not contract for meals shall have a kitchen.

Statutory Authority G.S. 153A-221.

.3939 FLOORS, CEILINGS, AND WALLS

(a) All floors in confinement units shall be sloped toward drains located outside of the cell areas, and the drains shall be tamper-resistant if necessary for security.

(b) All ceilings, walls, and floors in confinement units shall have a finished surface that is easily cleaned, nontoxic, and predominantly of light colors.

Statutory Authority G.S. 153A-221.

.3940 SHOWERS AND PLUMBING FIXTURES

(a) If provided, each municipal lockup shall have at least one shower for every eight inmates.

(b) If provided, showers shall have drains that prevent water from draining outside the shower, and the shower fixtures and drains shall be tamper-resistant if necessary for security.

(c) Plumbing fixtures shall be made of stainless steel or other suitable materials as necessary for security.

(d) Drinking fountains shall be equipped with mouth guards.

(e) All privacy partitions in showers and bathrooms shall be high enough to allow limited privacy for the inmates while still allowing adequate supervision by officers.

Statutory Authority G.S. 153A-221.

.3941 WINDOWS AND GLAZING

(a) Windows and window framing, including glazing, shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Glazing shall be diffused or obscured if it affords a view into confinement units from outside the municipal lockup.

(c) View panels shall be made of materials necessary to provide the degree of security required for the area in which they are used, and those used for confinement units shall have a

minimum area of 180 square inches and permit observation of the entire unit.

Statutory Authority G.S. 153A-221.

.3942 DOORS, BUNKS AND LOCKS

(a) Doors, locks and detention hardware shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Doors to all confinement units shall have view panels.

(c) Doors shall operate independently of each other, and the cell doors in a cellblock shall be capable of simultaneous release during an emergency.

(d) Doors and locks that are electronically controlled shall be equipped with manual override.

(e) Food passes, if used, shall have large enough openings to permit the passage of a food tray.

(f) Bunks shall have dimensions necessary to accommodate a standard detention mattress and they shall be securely anchored at least 15 inches above the floor. When one bunk is placed above another, the lower bunk shall be approximately 15 inches and the upper bunk approximately 50 inches above the floor.

(g) Doors, locks, detention hardware and bunks shall be designed to inhibit their use for an attempted suicide.

Statutory Authority G.S. 153A-221.

.3943 SAFETY EQUIPMENT

In each municipal lockup the safety equipment, including intercoms, fire extinguishers, smoke detectors, and sprinkler heads, shall be tamper-resistant if necessary for security.

Statutory Authority G.S. 153A-221.

.3944 MECHANICAL SYSTEMS

(a) Each municipal lockup shall have heating, ventilation, and air conditioning systems that are capable of maintaining temperatures in confinement units at a minimum of 68 degrees Fahrenheit during the heating season and a maximum of 85 degrees Fahrenheit during the cooling season.

(b) The master controls for the system shall be located outside the confinement units and shall be accessible to officers during an emergency.

(c) The ducts for the systems shall be designed to prevent the escape of inmates and the passage of contraband, and they shall be designed to inhibit their use for attempted suicide.

(d) The ventilation system shall provide a minimum of ten cubic feet per minute of fresh or purified air for each inmate.

Statutory Authority G.S. 153A-221.

.3945 PLUMBING SYSTEMS

(a) Each municipal lockup shall have a plumbing system that complies with the Commission for Health Services Rule 10 NCAC 10A and the North Carolina State Plumbing Code, both of which are hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Each municipal lockup shall have a hot water supply for inmate lavatories, if provided, and showers designed to meet the usual needs of the number of inmates confined in the municipal lockup.

(c) The master control valves for the plumbing system shall be located outside the confinement units and shall be accessible to officers during an emergency.

Statutory Authority G.S. 153A-221.

.3946 ELECTRICAL SYSTEMS

(a) Each municipal lockup shall have an electrical system that provides artificial lighting in the confinement units of at least 30 footcandles and that can be reduced during sleeping hours.

(b) Artificial lighting in the corridors shall be at least 20 footcandles.

(c) Lighting fixtures shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(d) The master controls and circuit breakers shall be located outside the confinement units and shall be accessible to officers during an emergency.

Statutory Authority G.S. 153A-221.

.3847 CLOTHING AND TOWEL HOOKS

Clothing and towel hooks shall not be used.

Statutory Authority G.S. 153A-221.

.3848 CONFINEMENT UNITS

The governing body shall decide what confinement unit or combination of confinement units it will include in its municipal lockup: single cells and multiple occupancy cells.

Statutory Authority G.S. 153A-221.

.3949 STANDARDS FOR SINGLE CELLS

Each single cell shall have:

(1) a minimum floor space of 50 square feet;

- (2) a minimum floor dimension of seven feet;
- (3) a toilet, a sink and a drinking fountain.

Statutory Authority G.S. 153A-221.

.3950 STANDARDS FOR MULTIPLE OCCUPANCY CELLS

Each multiple occupancy cell shall house no more than four inmates and shall have:

- (1) a minimum floor space of 50 square feet for the first inmate and 35 square feet of floor space for each additional inmate;
- (2) a minimum floor dimension of seven feet;
- (3) a toilet, a sink and a drinking fountain.

Statutory Authority G.S. 153A-221.

.3951 INSPECTIONS

All municipal lockups shall be visited and inspected at least twice each year, but a lockup shall be inspected more frequently if the Department considers it necessary or if it is required by an agreement of correction pursuant to Rule .3853 of this Subchapter.

Statutory Authority G.S. 153A-220; 153A-221.

.3952 REPORT OF INSPECTION

(a) The procedures contained in G.S. 153A-222 shall govern all inspections except those that find noncompliance with one or more of the provisions listed in Paragraph (b) of this Rule.

(b) The inspector shall forward a copy of the inspection report to the Secretary within ten days after the inspection if there are findings of noncompliance with any of the following standards contained in 10 NCAC 3J or the following statutes:

- (1) Classification; Rules .3807-.3810;
- (2) Fire Safety; Rules .3811-.3815;
- (3) Supervision; Rule .3817;
- (4) Sanitation and Personal Hygiene; Rules .3818-3819;
- (5) Food; Rules .3820-3824;
- (6) Medical Care of Inmates; Rules .3825-.3826;
- (7) G.S. 153A-224, Supervision of Lockups; or
- (8) G.S. 153A-226(b), Disapproval for Public Health Purposes.

(c) The inspector at the same time shall submit to the Secretary a written description of the conditions that caused noncompliance and a preliminary determination of whether those conditions jeopardize the safe custody, safety, health or welfare of the inmates confined in the municipal lockup.

(d) The inspection report shall be submitted to the local officials responsible for the municipal lockup within 30 days after the inspection as required by G.S. 153A-222, and it shall include a notice that the facility was not in compliance with one or more of the provisions listed in Paragraph (b) of this Rule. The notice shall state that the report has been submitted to the Secretary on a designated date for a final determination of whether conditions at the municipal lockup jeopardize the safe custody, safety, health or welfare of its inmates. The notice shall state that local officials will be mailed a final determination within 30 days of the designated date.

Statutory Authority G.S. 153A-220; 153A-221.

.3953 DETERMINATION THAT CONDITIONS JEOPARDIZE INMATES

(a) The Secretary shall determine whether conditions in the municipal lockup jeopardize the safe custody, safety, health or welfare of its inmates within 30 days after receipt of the inspection report and the supporting materials.

(b) The Secretary may determine that noncompliance with any of the provisions listed in 10 NCAC 3J .3851(b) jeopardizes the safe custody, safety, health or welfare of inmates confined in the lockup.

(c) Although noncompliance with other specific standards or statutes may be found to jeopardize inmate or staff safe custody, safety, health or welfare, the Secretary shall determine that noncompliance with any of the following provisions contained in 10 NCAC 3J jeopardizes the safe custody, safety, health or welfare of inmates confined in the lockup:

- (1) Mattress flame retardant requirements; Rule .3814;
- (2) Emergency exits; Rule .3811;
- (3) Fire plan; Rule .3813;
- (4) Fire equipment; Rule .3812;
- (5) Separation of male and female inmates; Rule .3808;
- (6) Separation of inmates under age 18; Rule .3809;
- (7) Medical plan; Rule .3825;
- (8) Disapproval for public health purposes; G.S. 153A-226(b).

(d) The Secretary shall notify the local officials responsible for the municipal lockup within 15 days of his final determination if he concludes that the conditions in the lockup jeopardize the safe custody, safety, health or welfare of the inmates. The Secretary shall order corrective action, order the municipal lockup closed, or enter into an agreement of correction with local officials pursuant to 10 NCAC 3J .3853.

(e) The Secretary shall notify the local officials responsible for the lockup within 15 days of his final determination if he concludes that the conditions in the lockup do not jeopardize the safe custody, safety, health or welfare of the inmates. The notice shall direct local officials to consider the inspection report and initiate corrective action pursuant to the provisions of G.S. 153A-222.

Statutory Authority G.S. 153A-220; 153A-221.

.3954 AGREEMENT OF CORRECTION

(a) Before ordering corrective action or ordering the lockup closed, the Secretary may direct the governing body to enter into an agreement of correction. If the Secretary chooses this option, he shall require the governing body to enter into a written agreement within 30 days after it receives notice that conditions in the lockup jeopardize the safe custody, safety, health or welfare of the inmates.

(b) The agreement of correction at a minimum shall indicate the specific areas of noncompliance with the standards or statutes, the governing body's intent to remedy noncompliance; a plan for remedying the noncompliance, a definite and reasonable number of days within which the lockup will be brought into compliance and a schedule of inspections to monitor compliance.

(c) The agreement of correction may be extended once for a period not to exceed 60 days if the time period in the initial agreement expires before the lockup is brought into compliance, but only if the governing body is making a good faith effort to achieve compliance.

(d) If the lockup is not brought into compliance within the time period required by Paragraph (c) of this Rule, the Secretary shall order corrective action or order the lockup closed.

Statutory Authority G.S. 153A-220; 153A-221.

.3955 ORDER OF CORRECTIVE ACTION OR ORDER OF CLOSURE

If the Secretary determines that an agreement of correction is not appropriate, or if he determines that a lockup is not brought into compliance within the time period required by an agreement of correction, the Secretary shall order corrective action or order the lockup closed. Notice of the action taken shall be given to local officials responsible for the lockup as provided by G.S. 153A-223(1).

Statutory Authority G.S. 153A-220; 153A-221.

.3956 DESIGNATION BY SECRETARY

The Secretary may designate a person to act for him with respect to matters covered by this Section. The designation shall be in writing and it shall be on file with the Branch.

Statutory Authority G.S. 153A-220; 153A-221.

CHAPTER 39 - EMPLOYMENT PROGRAMS

SUBCHAPTER 39D - JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM

SECTION .0100 - ADMINISTRATION

.0101 IMPLEMENTATION SCHEDULE

(a) All counties operating a Community Work Experience Program on January 1, 1990 shall begin operation of the Job Opportunities and Basic Skills Training (JOBS) Program on October 1, 1990.

(b) Effective April 1, 1991:

(1) Any county within a single county Metropolitan Statistical Area shall begin operation of the JOBS program.

(2) Any county which has not begun the JOBS program and in which 1.500 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.

(3) Based on fund availability any remaining county which has not implemented JOBS may voluntarily begin operation of the JOBS program.

(c) Effective July 1, 1991:

(1) Any county which has not begun the JOBS program and in which .855 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.

(2) Based on fund availability, any remaining county which has not begun the JOBS program may voluntarily begin operation of the JOBS program.

(d) Effective January 1, 1992:

(1) Any county which has not begun the JOBS program and in which .346 percent or higher of the state's adult AFDC recipient population resided in September 1989 shall begin operation of the JOBS program.

(2) Based on fund availability, any remaining county which has not begun the JOBS program may voluntarily begin operation of the JOBS program.

(e) Any remaining county which has not implemented the JOBS program shall begin operation of the JOBS program effective July 1, 1992.

Statutory Authority G.S. 143B-153; 42 USC 682 et. seq.

.0102 COUNTY PLAN

Each county department of social services shall submit a county JOBS plan in accordance with guidelines issued by the Division of Social Services.

Statutory Authority G.S. 143B-153; 42 USC 682 et. seq.

.0103 OPTIONAL COMPONENTS

Job search, on-the-job training, and community work experience shall be included in the state's JOBS program.

Statutory Authority G.S. 143B-153; 42 USC 682 et seq.

.0104 POST-SECONDARY EDUCATION

Post-secondary education shall be included in the state's JOBS program.

Statutory Authority G.S. 143B-153; 42 USC 682 et seq.

.0105 PARTICIPATION RATE

Each county operating a JOBS program shall not be required to meet the federal participation rate, as described in 45 CFR 250.74, as long as the statewide rate is met.

Statutory Authority G.S. 143B-153; 42 USC 682 et seq.

.0106 EXPENDITURE RATE

Each county operating a JOBS program shall not be required to spend 55 percent of its JOBS funds on the federally established target groups, as defined in 45 CFR 250.1, as long as the statewide rate is met.

Statutory Authority G.S. 143B-153; 42 USC 682 et seq.

.0107 APPLICANTS

AFDC applicants shall not participate in the JOBS program unless the county department of social services includes services and activities for applicants in the county's JOBS plan and the county JOBS Program can meet the participation rate and expenditure rate.

Statutory Authority G.S. 143B-153; 42 USC 682 et seq.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION 1400 - PERSONNEL

.1407 STAFFING

(a) In addition to the requirements set forth in Paragraphs (b) through (d) of this Rule, the requirements in 10 NCAC 42C .2005 shall control for this Subchapter.

(b) Homes must staff to the licensed capacity of the home or to the resident census. When a home is staffing to resident census, the county department of social services must be notified in writing in advance. A daily census log must be maintained which lists current residents by name, room assignment and date of admission. The administrator must prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties, and the amount of time and designated hours estimated to be spent for each duty. There must be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies. The county department of social services must be notified in writing in advance when the home returns to staffing to licensed capacity. When a home is staffing to licensed capacity the requirements set forth in this Paragraph do not apply except for the plan of operation as described in Paragraph (4)(A) of this Rule.

(c) ~~(b)~~ Homes with capacity or census of 7-12 or fewer residents.

(1) At all times there must be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;

(2) A free standing home with capacity or census of ~~7-12~~ 12 or fewer residents must comply with the following staffing:

(A) When the administrator or supervisor-in-charge is not on duty within the home, there must be at least one staff member on duty on the first and second shifts and at least one staff member on call within the building on third shift. There must be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom; and

(B) When the administrator or supervisor-in-charge is on duty within the home on

the first and second shifts and on call within the home on the third shift, another staff member (i.e., co-administrator, supervisor-in-charge or aide) must be in the building or within 500 feet of the home and immediately available.

- (3) A cluster of homes with capacity or census of ~~7-12~~ 12 or fewer residents must comply with the following staffing:

(A) When there is a cluster of up to six licensed homes located adjacently, there must be at least one administrator or supervisor-in-charge who lives within 500 feet of each of the homes, is immediately available, and who, as supervisor for all the homes, is directly responsible for assuring that all required duties are carried out in each home; and

(B) In each of the homes, at least one staff member must be on duty on the first and second shifts and at least one staff member must be on call within the building during the third shift. There must be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom.

- (4) The following shall apply to all homes with capacity or census of ~~7-12~~ 12 or fewer residents:

(A) The administrator must prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties and the amount of time estimated to be spent for each duty. There must be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies;

(B) At least 12 hours must be spent daily providing for the personal services, health services, drug management, meaningful activities, and other direct services needed by the residents. These activities are the primary responsibility of the staff member(s) on duty on the first and second shifts; however, other help, such as the supervisor-in-charge and activities coordinator may be used to assist in providing these services;

(C) During the remaining hours, the staff member on duty may perform housekeeping and food service duties as long as the staff member can respond immediately to resident calls or the residents are otherwise supervised. Also, the person on call within the home may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. if the duties do not hinder

care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns; and do not take the person on call out of view of where the residents are;

- (D) Additional help must be available daily to assure adequate housekeeping and food service.

~~(d)~~ ~~(e)~~ Homes with capacity or census of 13-20 must comply with the following staffing: Note: When the home is staffing to census and the census falls below 13 residents, the staffing requirements for a home with 12 or fewer residents will apply.

(1) At all times there must be an administrator or super-in-charge in the home or within 500 feet of the home and immediately available;

(2) When the administrator or supervisor-in-charge is not on duty within the home, there must be at least one staff member on duty on the first, second and third shifts. Since the staff member on the third shift is on duty, there is no required call system for use by the residents;

(3) When the administrator or supervisor-in-charge is on duty within the home, another staff member (i.e. co-administrator, supervisor-in-charge or aide) must be in the building or within 500 feet of the home and immediately available;

(4) The job responsibility of the staff member on duty within the home is to provide the direct personal assistance and supervision needed by the residents. Any housekeeping duties performed by the staff member between the hours of 7 a.m. and 9 p.m. are to be limited to occasional, non-routine tasks. The staff member may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns and do not take the staff member out of view of where the residents are. The staff member on duty to attend to the residents is not to be assigned food service duties; and

(5) In addition to the staff member(s) on duty to attend to the residents, there must be sufficient help available daily to perform necessary housekeeping and food service duties.

~~(e)~~ ~~(f)~~ Homes with capacity or census of 21 or more must comply with the following staffing: Note: When the home is staffing to census and the census falls below 21 residents, the staffing

PROPOSED RULES

requirements for a home with a census of 13-20 will apply.

- (1) At all times there must be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;
(2) While the Division of Facility Services may require a home to have additional aide duty in excess of the minimum...
(3) The following describes the nature of the aide's duties, including allowances and limitations:
(A) The job responsibility of the aide is to provide the direct personal assistance and supervision needed by the residents;
(B) Any housekeeping performed by an aide between the hours of 7 a.m. and 9 p.m. is to be limited to occasional, non-routine tasks...
(C) If the home employs more than the minimum number of aides required, any additional hours of aide duty above the required hours of direct service between 7 a.m. and 9 p.m. may involve the performance of housekeeping tasks;
(D) An aide may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder the aide's care of residents or immediate response to resident calls...

- (E) Aides are not to be assigned food service duties, however, providing assistance to individual residents who need help with eating is an appropriate aide duty.
(4) In addition to the staffing required for management and aide duties, there must be sufficient personnel employed to perform necessary housekeeping and food service duties.

Statutory Authority G.S. 131D-2; 143B-153.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to adopt rule cited as 10 NCAC 3J .3601; repeal rules cited as 10 NCAC 3J .5101, .5201, .5301 - .5302, .5401 - .5404, .5501 - .5507, .5601 - .5603, .5701 - .5705, .5801 - .5802, .5901 - .5907, .6001 - .6006, .6101 - .6102, .6201 - .6202, .6301.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 3:30 p.m. on March 5, 1990 at Room 201, Council Building, 701 Barbour Drive, Raleigh, North Carolina 27603.

Comment Procedures: Any interested person may present comments in writing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Lynda McDaniel, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina 27603, (919) 733-2342.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3I - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

SECTION .3600 - SATELLITE JAIL/WORK RELEASE UNITS

.3601 APPLICABILITY

The standards for definitions, operations, construction and enforcement contained in Sections .2300 - .3500 that apply to jails shall also apply to satellite jail/work release units.

Statutory Authority G.S. 153A-230.4.

SECTION .5100 - DEFINITIONS (REPEALED)

.5101 DEFINITIONS

PROPOSED RULES

Statutory Authority G.S. 153A-230.4.

SECTION .5200 - STANDARDS (REPEALED)

.5201 DEVELOPMENT OF MINIMUM STANDARDS

Statutory Authority G.S. 153A-230.4; 153A-230.5.

SECTION .5300 - DESIGN DEVELOPMENT AND APPROVAL FOR SATELLITE JAIL/WORK RELEASE UNITS (REPEALED)

.5301 ARCHITECT OR ENGINEER
.5302 PLAN DEVELOPMENT

Statutory Authority G.S. 153A-230.4.

SECTION .5400 - OPERATION PROGRAM (REPEALED)

.5401 REQUIREMENT FOR OPERATION PROGRAM
.5402 CONTENTS OF AN OPERATIONS PROGRAM
.5403 APPROVAL OF THE PROGRAM
.5404 REVIEW OF THE PROGRAM

Statutory Authority G.S. 153A-230.4.

SECTION .5500 - SATELLITE JAIL/WORK RELEASE UNITS (REPEALED)

.5501 SATELLITE JAIL/WORK RELEASE
.5502 CONFINEMENT UNIT
.5503 PROGRAMMING AREAS
.5504 ADMINISTRATION AREA
.5505 CONSTRUCTION MATERIALS FOR SATELLITE JAIL/WORK RELEASE UNITS
.5506 MECHANICAL SYSTEMS
.5507 GENERAL REQUIREMENTS

Statutory Authority G.S. 153A-230.3; 153A-230.4.

SECTION .5600 - CLASSIFICATION (REPEALED)

.5601 FEMALE INMATES
.5602 STAFFING
.5603 CLASSIFICATION SYSTEM

Statutory Authority G.S. 153A-230.3; 153A-230.4.

SECTION .5700 - SAFETY AND SECURITY (REPEALED)

.5701 SECURITY
.5702 KEYS AND EXITS

.5703 FIRE EXTINGUISHERS AND FIRE SAFETY TRAINING
.5704 FIRE PLAN
.5705 MATTRESSES

Statutory Authority G.S. 153A-230.4.

SECTION .5800 - STAFFING (REPEALED)

.5801 PERSONNEL
.5802 RECORDS

Statutory Authority G.S. 153A-230.4.

SECTION .5900 - SANITATION AND PERSONAL HYGIENE (REPEALED)

.5901 BEDDING
.5902 SHAVING
.5903 TOWELS AND SOAP
.5904 SHOWERS
.5905 SANITATION
.5906 WATER SUPPLY
.5907 LIQUID WASTES

Statutory Authority G.S. 153A-230.4.

SECTION .6000 - FOOD (REPEALED)

.6001 DIET
.6002 FOOD PREPARATION AND SERVICE
.6003 FOOD RECORDS
.6004 SANITATION
.6005 FOOD FROM OUTSIDE ESTABLISHMENTS
.6006 STAFFING

Statutory Authority G.S. 153A-230.4.

SECTION .6100 - MEDICAL CARE (REPEALED)

.6101 MEDICAL PLAN
.6102 REPORT OF INMATE'S DEATH

Statutory Authority G.S. 153A-230.4.

SECTION .6200 - TRAINING OF PERSONNEL (REPEALED)

.6201 EMPLOYEE REQUIREMENTS
.6202 TRAINING

Statutory Authority G.S. 153A-230.4.

SECTION .6300 - REPORTS (REPEALED)

.6301 MONTHLY REPORTS OF COUNTY SATELLITE JAIL/WORK RELEASE UNITS

Statutory Authority G.S. 153A-230.4.

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources, Division of Services for the Blind intends to amend rule(s) cited as 10 NCAC 19G .0502.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 10, 1990 at DSB Conference Room, Fisher Building, Governor Morehead Campus, 309 Ashe Avenue, Raleigh, NC 27606.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Herman Gruber, Designee, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, NC (919) 733-9822.

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19G - VOCATIONAL REHABILITATION

SECTION .0500 - ECONOMIC NEED

.0502 ECONOMIC NEEDS POLICIES

(a) The services for the blind will establish economic need for each client either simultaneously with or within a reasonable time prior to the provision of those services for which the division requires a needs test.

(b) The division of services for the blind will furnish the following services not conditioned on economic need:

- (1) evaluation of rehabilitation potential (including diagnostic and related services);
- (2) counseling, guidance, and referral;
- (3) tuition and supplies for publicly operated sheltered workshops;
- (4) books and other training materials;
- (5) tuition and fees;
- (6) ~~(4)~~ interpreter services for the deaf;
- (7) ~~(5)~~ reader services; rehabilitation teaching services, and orientation and mobility services for the blind;
- (8) ~~(6)~~ recruitment and training services to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;
- (9) ~~(7)~~ placement in suitable employment;

~~(8)~~ DSB Rehabilitation Center services including transportation and training supplies contingent on an individual's participation in the center program;

~~(9)~~ extended evaluation services;

~~(10)~~ diagnostic transportation;

~~(11)~~ on the job training;

~~(12)~~ equipment and initial stocks and supplies for state owned (Randolph-Sheppard) vending stands.

(c) The following services will be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance;
- (3) transportation, except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
- (5) telecommunications, sensory, and other technological aids and devices;
- (6) post-employment services necessary to assist handicapped individuals to maintain suitable employment except for those services not conditioned on economic need listed in (b) of this Rule;
- (7) occupational licenses;
- (8) tools, equipment, and initial stocks (including livestock) and supplies; and necessary shelters in connection with the foregoing items;
- (9) expenditures for short periods of medical care for acute conditions arising during the course of vocational rehabilitation, which, if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective;
- ~~(10) books and other training materials;~~
- ~~(11) tuition and fees;~~
- (10) ~~(12)~~ other goods and services, not contraindicated by the act, which can reasonably be expected to benefit a handicapped individual in terms of his employability.

(d) The Division of Services for the Blind will maintain a written standard for measuring the financial need of clients with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

(e) The policies will be reasonable and will be applied uniformly so that equitable treatment is

accorded all handicapped individuals in similar circumstances.

Authority G.S. 111-28; 34 C.F.R. 361.47.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50A .0601; and adopt rule(s) cited as 10 NCAC 50A .0602 - .0604.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 1:30 p.m. on March 16, 1990 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning these proposed rule changes must be submitted by March 16, 1990, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Houtel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50A - GENERAL PROGRAM ADMINISTRATION

SECTION .0600 - CORRECTIVE ACTIONS IN MEDICAID CASES

.0601 GENERAL

(a) The county is authorized to correct prior actions taken when:

- (1) An application is approved for a person whose income and needs have been considered in his spouse's case to cause the certification periods of the two clients to coincide; or
- (2) A client provides verification that his actual charges exceeded the estimated Medicare payments; or
- (3) An appeal decision is in favor of the client; or
- (4) A court decision is in favor of the client; or
- (5) A client authorized for twelve months receives an increase in income that causes the client to have a deductible; or

- (6) The county discovers it made an administrative error due to:
 - (A) Failure to act properly on information received; or
 - (B) Termination or denial of assistance in error; or
 - (C) Incorrect determination of the authorization period or erroneous data entry; or
- (7) A monitoring report shows a client was due a penalty payment due to delay without good cause in completing an application; or
- (8) A quality control report indicates overstated client liability; or
- (9) Any other action deemed by the Recipient Services Section to be appropriate and with good cause.

department of social services must correct prior actions according to Rules .0602 and .0603 in this Subchapter when it is discovered that prior actions were in error, or the recipient's circumstances have changed.

(b) The time limit for effecting a corrective action after discovery of the need for action is:

- (1) Simultaneous with authorization of assistance for the financially responsible spouse of a client whose certification period must coincide; or
- (2) Up to ninety days after authorization using the estimated Medicare payment; or
- (3) Within thirty days after a report of increased income is received for a client with a twelve month authorization period; or
- (4) Up to twelve months immediately preceding the month of discovery of an administrative error provided the county completes the corrective action and request for override of the Medicaid billing limit within sixty days after the discovery of the error; or
- (5) Within two weeks for all other corrective actions unless the county has good cause. Good cause is limited to:
 - (A) Need to verify other conditions of eligibility are met; or
 - (B) Disagreement by county with decision requiring corrective action and agency has requested administrative review by Recipient Services Section or has filed a petition for judicial review in the Superior Court; or
 - (C) Inability to locate client or his representative.

Information leading to corrections may be reported by the recipient, medical providers, state agencies, or any other source with knowledge about the recipient's circumstances.

PROPOSED RULES

Authority G.S. 108A-54; 42 C.F.R. 431.246; 42 C.F.R. 435.916.

.0602 CORRECTIVE ACTIONS

(a) Corrections in an applicant's or recipient's case must be made by the county department of social services when:

- (1) An individual was discouraged from filing an application; or
- (2) An appeal or court decision overturns an earlier adverse decision; or
- (3) The certification periods of financially responsible persons need to be adjusted to coincide; or
- (4) Information received from any source is verified and is found to change the amount of the recipient's deductible, patient liability, authorized period or otherwise affect the recipient's eligibility status; or
- (5) Additional medical bills or verified medical expenses establish an earlier Medicaid effective date; or
- (6) The agency made an administrative error due to:
 - (A) Assistance was terminated or denied in error; or
 - (B) Failure to act properly on information received; or
 - (C) Incorrect determination of the authorization period, Medicaid effective date, or erroneous data entry; or
- (7) Monitoring under "Alexander vs. Hill" determines an application was pended without good cause and a penalty is due; or
- (8) Any other action deemed by the Medicaid Eligibility Section to be appropriate and with good cause.

(b) Corrections in an applicant's or recipient's case must be made by the Division of Medical Assistance when:

- (1) Verified information is received showing that a terminated case has errors in the Medicaid eligibility segments, Buy-In effective date, eligible case members, CAP or HMO indicators and effective dates or other data that is causing valid claims to deny; or
- (2) The county department of social services refuses to take required corrective actions; or
- (3) An audit report shows verified errors in the Medicaid eligibility history or recipient identification number.

Authority G.S. 108A-54; 42 C.F.R. 431.246; 42 C.F.R. 435.904.

.0603 TIME LIMITS FOR CORRECTIONS

(a) The county department of social services and Division of Medical Assistance shall make necessary corrections promptly, but within 30 days after discovery of the need for action unless good cause exists for failure to act timely.

(b) Good cause is limited to:

- (1) Need to verify other conditions of eligibility before authorizing eligibility; or
- (2) The county department of social services is unable to locate the applicant or recipient; or
- (3) The county department of social services disagrees with a decision requiring corrective action and has requested administrative review by the Medicaid Eligibility Section;

(c) To receive state and federal financial participation in any benefits authorized retroactively by corrective actions, the effective date of the correction must correspond with the date assistance would have been effective had the decision not been adverse or had the error not occurred, but may be no earlier than the following dates:

- (1) Retroactive to the date ordered by the appeal or court decision if all eligibility conditions are met, including any legal retroactive coverage period associated with the adverse action; or
- (2) If a reported change is beneficial to the recipient effective:
 - (A) The first of the calendar month following adequate notice; or
 - (B) Retroactive to the beginning of the current certification period; or
 - (C) Retroactive to the month within the current certification period in which the change occurred; or
 - (D) Retroactive to the original date of application for denials based on adoption of Title II or XVI decisions that have subsequently been reversed; or
- (3) The earliest date in the current certification period on which additional medical expenses are sufficient to meet the case deductible; or
- (4) For administrative errors up to 12 months immediately preceding the month the error was discovered; or
- (5) Retroactive to the date of error for "Alexander vs. Hill" penalties.

(d) If the change is adverse to the recipient, it must be effective with the first calendar month "following" expiration of the ten work day advance notice period.

Authority G.S. 108A-54; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.904.

.0604 RESPONSIBILITY FOR ERRORS

(a) The Division of Medical Assistance shall be financially responsible for the erroneous issuance of benefits and Medicaid claims payments when:

- (1) Policy interpretations given by Division of Medical Assistance or its agents are erroneous and that is the sole cause of any erroneous benefits or payments; or
- (2) Division of Information Systems operations staff fail to manually remove Medicaid ID cards from outgoing mail subsequent to the county DSS's timely authorization of a termination or reduction in benefits; or
- (3) A systems failure at the state computer center occurs on the last cutoff date of the month preventing the county DSS from data entering case terminations or adverse actions; or
- (4) Any other failure or error attributable solely to the state occurs.

(b) The county department of social services shall be financially responsible for the erroneous issuance of benefits and Medicaid claims payments when it:

- (1) Authorizes retroactive eligibility outside the dates permitted by regulations or Rule .0603 of this Subchapter; or
- (2) Fails to send required notices of patient liability or deductible balance to medical providers; or
- (3) Fails to end-date special coverage indicators such as CAP, or HMO in the state eligibility information system; or
- (4) Enters an authorization date in the eligibility system that is earlier than the determined date of eligibility; or
- (5) Fails to determine the availability of or fails to data enter third party resource information in the state eligibility information system; or
- (6) Terminates a case or individual after the Medicaid ID card has been issued; or
- (7) Issues a county-typed Medicaid ID card that has erroneous dates of eligibility; or
- (8) Fails to initiate application for Medicaid B coverage for recipients who are eligible, but refuse or are unable to apply for themselves; or
- (9) Takes any other action that requires payment of Medicaid claims for an ineligible individual, for ineligible dates or in an amount that includes a recipient's liability

and for which the state cannot claim federal participation.

(c) The amounts to be charged back to the county department of social services for erroneous payments of claims shall be the state and federal shares of the erroneous payment, not to exceed the lesser of the amount of actual error or claims payment.

Authority G.S. 108A-54; 42 C.F.R. 433.32; 42 C.F.R. 435.904.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources -- Division of Economic Opportunity intends to amend rule(s) cited as 10 NCAC 51D .0107.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 6, 1990 at Conference Room, Division of Economic Opportunity, 2413 Crabtree Blvd., Suite 119, Raleigh, North Carolina 27604.

Comment Procedures: All interested persons are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to file a written copy with the hearing officer. Further details may be obtained by writing or calling: George C. Jones, Director, Division of Economic Opportunity, 2413 Crabtree Blvd., Suite 119, Raleigh, North Carolina 27604, (919) 733-2633.

CHAPTER 51 - DIVISION OF ECONOMIC OPPORTUNITY

SUBCHAPTER 51D - COMMUNITY ACTION PARTNERSHIP PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0107 ALLOCATION OF FUNDS

(a) Ninety percent of the funds allocated under the Community Action Partnership Program will be used to make grants in fiscal year 1985 and in each subsequent fiscal year to those community action agencies as defined in (a) and (d) of Rule .0105 of this Section and which are recertified as eligible agencies each year by the division. The amount of funds allocated to each eligible community action agency shall be based on the fol-

lowing method of distribution: Funds shall be allocated based on the ratio (percentage) of persons in poverty in the county (counties) served by the eligible agency compared to the number of persons in poverty in the total area (counties) served by all eligible agencies. Person in poverty is defined as those persons who fall below the official poverty guidelines as established annually by the U.S. Office of Management and Budget.

(b) Ten percent of the funds allocated under the Community Action Partnership Program will be used to make grants in fiscal year 1985 and each subsequent fiscal year to those limited purpose agencies which are recertified as eligible agencies each fiscal year by the division. The division shall allot to each eligible limited purpose agency an equal amount of funds. For the purpose of this Rule, limited purpose agencies shall include agencies as defined in (2) and (3) of Rule .0104 of this Section.

(c) Eligible agencies will not be allowed to carry forward unobligated funds at the end of a grant agreement to the succeeding grant agreement. All unobligated funds must be returned to the division within 60 days after the termination date of the grant agreement.

(d) Supplemental State Appropriations. The preceding Paragraphs of this rule do not apply to the allocation of supplemental appropriations made to the Division by the State of North Carolina including but not limited to the appropriation made in Section 47 of Senate Bill 1042 of the 1989 Session of the General Assembly. Such allocations to eligible applicants for eligible activities will be made by the Division in a manner consistent with state guidelines and conditions contained in Subchapter 51B of this Chapter. The Division shall determine the number of grants awarded and the manner in which grantees are selected based upon the amount of the allocation and the intent of the applicable legislation and regulations.

Statutory Authority G.S. 113-28.21, et. seq; 143B-10.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 8 .0905.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 8:30 a.m. on March 6, 1990 at Manufactured Housing Board, 410 Boylan Avenue, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Owen Tharrington, c/o Manufactured Housing Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Owen Tharrington at (919) 733-3901 or Ellen Sprenkel at (919) 733-4700.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION .0900 - MANUFACTURED HOUSING BOARD

.0905 LICENSING

(a) Any person employed by a dealer whose occupational activity is that of selling on behalf of the retail dealership shall be licensed as a salesperson. Each salesperson's license shall be conspicuously displayed at all times by the dealership employing the salesperson.

(b) A manufactured housing salesperson may be allowed to engage in business during the time period after making application for a license but before such license is granted.

(c) The following shall not be required to be licensed as a manufactured housing dealer:

- (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court;
- (2) Public officials while performing their official duties;
- (3) Persons disposing of manufactured homes acquired for their own use, provided that said home is not used for the purpose of avoiding the provisions of G.S. 143-143.9;
- (4) Licensed real estate salesmen or brokers who negotiate or sell a manufactured home for any individual who is the owner of not more than three manufactured homes;
- (5) Banks and finance companies who sell repossessed manufactured homes who do not maintain a sales lot or building with one or more employed retail salespersons.

(d) Licenses shall be issued by the board whenever the application is in compliance with the applicable laws and regulations. Such license shall entitle the licensee to conduct the specified business for a period of one year from date of issuance or the first day of July, whichever is earlier. The board may, if it deems necessary, cause an investigation to be made to ascertain if all the

requirements set forth in the application are true and shall not issue a license to the applicant until it is satisfied as to the accuracy of the application.

(e) Manufactured housing manufacturers, dealers, and set-up contractors shall conspicuously display their licenses at all times at their place of business.

(f) Whenever a bond is required by G.S. 143-143.12, before any license shall be issued by the board, the applicant shall deliver to the board a corporate surety bond, cash bond or fixed value equivalent. The bond shall be to the board and in favor of any person who shall suffer any loss as a result of any violation of the law or administrative rules governing manufactured housing. The bond shall be for the license period and a new bond or proper continuation certificate shall be delivered to the board at the beginning of each license period. The bond for one type of license may not be considered as the bond for another type of license.

(g) License fees are as follows:

- (1) ~~two hundred fifty dollars (\$250.00)~~ three hundred dollars (\$300.00) per Certificate of Origin plant for manufactured housing manufacturers;
- (2) ~~one hundred dollars (\$100.00)~~ three hundred dollars (\$300.00) per county of operation for manufactured housing dealers;
- (3) ~~fifty dollars (\$50.00)~~ three hundred dollars (\$300.00) per county for supplemental manufactured housing dealer locations;
- (4) ~~twenty five dollars (\$25.00)~~ three hundred dollars (\$300.00) for retail manufactured housing salespersons; and
- (5) ~~twenty five dollars (\$25.00) for manufactured housing representatives; and~~
- (6) ~~(5) one hundred dollars (\$100.00)~~ three hundred dollars (\$300.00) per business location for set-up contractors.

Statutory Authority G.S. 143-143.10; 143-143.11.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2F .0101 - .0105.

The proposed effective date of this action is July 1, 1990.

The public hearing will be conducted at 2:00 p.m. on March 6, 1990 at Archdale Building,

Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes, and one typewritten copy of any such statement should be submitted to the panel conducting the hearing. Any additional comments on the rules should be forwarded to the Division of Environmental Management by March 13, 1990. Contact: Coy M. Batten, Division of Environmental Management, EHNH, P.O. Box 27687, Raleigh, NC 27611 (919) 733-6900.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2F - CONSTRUCTION LOANS

SECTION .0100 - FEDERAL, STATE REVOLVING FUND PRIORITY

.0101 PURPOSE OF THESE REGULATIONS

The following criteria shall serve as the basis for determining the priority assigned each eligible wastewater treatment works project and for selecting projects from the priority list for grant loan funding under Title IV of the Federal Water Pollution Control Act Amendments of 1972 and 1977. 1987.

Statutory Authority G.S. 143-215.3(a)(4); 159G-5(c).

.0102 GENERAL CRITERIA

(a) A priority listing of projects eligible for construction grant loan funding will be established in the descending order of the sum of the points awarded under Regulation .0103 of this Section, within each of the categories listed in Subdivision (b) of this Regulation. The project under consideration will be awarded the number of points assigned to a subdivision or item of a subdivision of Regulation .0103 of this Section which specifically apply to that project. Priority values will be assigned to projects on a scale of zero to 100.

(b) Projects will be certified for construction grant loan funding during a particular fiscal year depending on their importance and ranking on the priority list within the separate categories listed below. The total funds available determine the extent of the priority list. Projects in Category 1 will generally be funded before those in Category 2, and those in Category 2 will generally be funded before those in Category 3. ~~and so forth~~

PROPOSED RULES

Categories:

- (1) projects which are required to meet water quality standards and which must comply with enforceable provisions of the law (e.g., treatment works, and associated improvements including solutions to infiltration/inflow problems), or facilities identified in the Municipal Compliance Initiatives evaluation which are necessary to maintain compliance;
 - (2) projects which are needed to meet water quality standards and to correct demonstrated local public health problems, e.g., treatment works, interceptors, and collection systems to eliminate septic tank systems in areas where there is a public health hazard or demonstrated water pollution problems;
 - (3) projects which are needed to provide wastewater treatment plants and/or interceptors for normal growth and expansion of communities.
- (4) ~~projects which are needed to provide for expansion of collection systems and/or separation of combined sewers.~~
- (c) After applying the provisions of Subdivisions (a) and (b) of this Regulation, the Commission will exercise its discretionary authority in establishing priority for funding of projects when two or more projects receive the same number of points or when projects are located in critical areas designated by the Commission.
- (d) ~~Projects which receive a step II or step III grant in a preceding fiscal year will be retained on the priority list, will be evaluated and given special consideration during successive fiscal years until the sewerage system improvement need for which the initial grant was made is funded.~~
- (e) ~~Projects which are assigned priority for a step I, II, III or combination of steps for federal grants loan shall be of such scope as to provide adequate treatment to meet effluent limitations and water quality standards applicable to receiving waters, and will be comprised of wastewater collection systems, wastewater treatment works systems or operable segments of such systems.~~
- (f) ~~The discharge inventory will be compiled based on conditions existing prior to and until January 1 of that year, and the priority list will be compiled based on conditions existing or information submitted prior to February 1 of each year.~~
- (g) ~~Projects certified for priority under the Federal Water Pollution Control Act Amendments of 1972 and 1977 must have on file the required information and documents by April 1st of the same fiscal year in which the funds are al-~~

located to the state. Federal grant funds assigned to projects which have not filed all required documents by April 1st of the fiscal year will be subject to reassignment to other projects being considered for funding.

(f) ~~(h)~~ Project applications filed with the Commission on or before March 4 31 of each year will be considered for priority. Any such applications which are not certified for priority will be reviewed annually and, if determined necessary, will be returned to the applicant for revisions. Any application returned to the applicant may be revised and resubmitted to the Commission for consideration of priority the succeeding fiscal year.

(g) ~~Each year, at the time of certifying projects for funding, the Commission will establish, from the state's allocation, a contingency fund to accommodate project cost overruns.~~

(g) ~~(j)~~ Public hearing(s) will be held on the priority and proposed funding lists. list and Intended Use Plan. The priority and funding lists list and Intended Use Plan proposed for public hearing will be reviewed and approved by the Environmental Management Commission or its successor. The final funding priority list and Intended Use Plan for each fiscal year will be approved by the Commission.

(h) ~~Not more than 25 percent of the funds allocated to the state in any given year may be used to fund projects which cannot be justified as necessary to meet enforceable provisions of the law in the following needs categories:~~

- (1) ~~sewer system replacement or major rehabilitation;~~
 - (2) ~~new collection sewers and appurtenances;~~
 - (3) ~~new interceptors and appurtenances;~~
 - (4) ~~correction of combined sewer overflow.~~
- (4) ~~For collection sewer projects, where the population density within the collection system area is less than 1.7 persons per acre (one household per two acres); collection sewer projects shall be considered ineligible unless a severe pollution or public health problem is specifically documented.~~

(h) Fifteen percent of the funds available each year for State Revolving Fund projects shall be reserved for small unsewered communities with a population of 3,500 or less. If all the funds cannot be used by small, unsewered communities, the reserved funds may be approved for larger communities.

(i) ~~(m)~~ Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Environmental Management Commission may award a higher priority value to an eligible application if the proposed project is required to insure the

PROPOSED RULES

commitment of allocated funds required to be reserved by the federal regulations, i.e., reserve for innovative and alternative technology project ~~grant increase~~ increases and reserve for alternative systems for small communities. The priority point values awarded should be the minimum required to assure the project is included in the fundable portion of the list.

(j) ~~(h)~~ These regulations will govern allocation of federal grant loan funds for fiscal year ~~1979~~ 1990 and succeeding years. Any modifications shall be approved by the Commission. A public hearing(s) will be held before the Commission approves substantial modifications.

Statutory Authority G.S. 143-215(a)(4); 159G-5(c).

.0103 BASIS FOR PRIORITY

(a) Wastewater Treatment Plants:

(1) Discharge Inventory and Priority Factors (Maximum Value -- 50 Points)

(A) The number of points assigned under Subdivision (a) of this Rule will be determined from the discharge inventory rating assigned the project.

(B) The discharge inventory rating for each project is computed as follows:

Discharge Inventory Rating = S x A x B where:

S is the rating number for the sub-basin in which the project is located and is computed by $S = a + b + c + d$ where:
 a = The ratio of waste discharge volume to the 10-year 7-day low flow originating in the sub-basin.

b = The relative population in the sub-basin.

c = The severity of water quality degradation as reflected by dissolved oxygen depletion, pH and organic pollution load carried by streams in the sub-basin utilizing the state's entire data base from 1968 to the present.

d = A field correction factor to the severity of degradation factor for the purpose of correction in instances where water quality has been improved during the period of the data base, for recognition of water quality problems not considered in the data base search, and for the purpose of compensation to reflect relatively whether degradation occurred infrequently, or at an isolated point, or whether the degradation applied to a larger number of points in the sub-basin.

A and B for Point Source Discharges:

A = A discharge volume factor representing the volume magnitude of the discharge as follows:

Design Capacity of Treatment Works*
Mgd

0.010	0.009
0.050	0.049
0.100	0.099
0.200	0.199
0.500	0.499
1.500	1.499
5.000	4.999
15.000	14.999
50.000	49.999

Factor

0.2
0.4
0.6
0.8
1.0
1.4
1.6
1.8
2.0

* Design capacity of treatment works will refer to said capacity of existing treatment plants if no engineering report or facility plan indicating additional needs has been approved. In cases where an approved facility plan indicates a new facility will replace one or more existing facilities, then only the facilities which are proposed to be constructed or remain in existence will be rated in the inventory. Facilities proposed to be abandoned will be included in the inventory but will not be rated. Factor B for each proposed facility will be determined by averaging the treatment need factors weighted by the discharge volume of each of the facilities to be abandoned. In cases where wastes are discharged without treatment, the discharge volume shall be determined on the basis of an estimate of the average daily volume of untreated wastes discharged.

B = A treatment need factor which relates to the adequacy of existing treatment facilities and is determined as follows:

		UPGRADING NEED IS
EXISTING FACILITY PROVIDES	AND	
Primary	1	Secondary

PROPOSED RULES

or Less		Tertiary
		Advanced
Secondary	2/	None
		Modify
		Tertiary
		Advanced
Tertiary	3/	None
		Modify
		Advanced
Advanced	4/	None
		Modify

**POINTS ASSIGNED WITH
RESPECT TO EITHER**

UPGRADING ONLY	UPGRADING AND OR EXPANSION
1.5	2.0
2.0	2.5
2.5	3.0
0.5	1.0
1.0	1.5
1.5	2.0
2.0	2.5
0.5	1.0
1.0	1.5
1.5	2.0
0.5	1.0
1.0	1.5

* Upgrading and expansion needs will be ascertained from basin plans, approved engineering reports or facility plans, or in the absence of such plans will be based on judgement of the staff. For the purpose of these regulations, a wastewater treatment works need will be deemed to have been satisfied at such time as contracts for the needed works are executed. This factor indicates the difference between the treatment presently provided and the treatment needed to comply with regulations or water quality standards, and is therefore, indicative of the severity of the pollution problem at a particular discharge.

Note:

- 1/ Primary treatment or less will include raw sewage discharges, screened and/or settled sewage discharges and biological treatment which does not include final clarification except that naturally aerated waste stabilization lagoons will be considered secondary treatment.
- 2/ Secondary treatment means biological treatment followed by clarification, but includes waste stabilization lagoons.

3/ Tertiary treatment means treatment for the removal of fine suspended solids from secondary facility effluents.

4/ Advanced treatment means the employment of an additional process or processes for the removal of nitrogen, phosphorus, carbon or other pollutants from wastewaters which have received tertiary treatment.

A and B for Discharges to Groundwater in Unsewered Areas:

A = A factor representing the magnitude or potential magnitude of the problem = $\frac{x + y + z}{3}$ and where x = a problem

solution approach factor which relates to the likelihood of success of constructed facilities in protecting water quality or abating potential health hazards as follows:

Within any facility planning or larger area, community where adequate waste treatment will be provided by a single authority, by cooperative arrangements among communities, or by joint waste treatment management by communities, is currently available. Factor: 1.0

The community is acting alone and waste treatment management and sewer service is intended only for and by the community. Factor: 0.0

Adequate wastewater treatment is not currently available and must be provided for the proposed sewer system. Factor: 0.5

y = A factor relating population density of the community to the use and character of surface waters which would receive directly the overland runoff and groundwater from existing disposal systems. (Estimates by the staff of peak population density will be used for communities which are subject to significant population variance.)

Population Density

Population/sq. mi.

- 0 - 499
- 500 - 999
- 1000 - 1499
- 1500 - 1999
- 2000 or more

Factor
Class of Potential Receiving
Surface Waters

SA	AH	B-SB	C-SC
----	----	------	------

PROPOSED RULES

	<u>WSII - WSIII</u>	<u>C = Trout</u>	
0.25	0.10	0.075	0.025
1.00	0.25	0.100	0.075
1.50	1.00	0.250	0.100
1.75	1.50	1.000	0.250
2.00	1.75	1.500	1.000

z = A factor relating to the adequacy of existing disposal methods and is an estimate of the ratio of privies and malfunctioning individual sewage disposal systems to the total number of individual disposal systems in the area or in cases where this measure is not applicable, a value ranging from zero to one reflecting potential problems associated with continued use of individual sewage disposal systems.

B = A treatment need factor calculated in the same manner as for point source discharges.

(C) The discharge inventory rating for each project will be divided by a common factor to be determined each fiscal year by the following method:

The highest discharge rating assigned to a project for the fiscal year will be divided by a factor such that the result will equal to 50. This factor will be used to divide the discharge inventory ratings for all other projects considered during the same fiscal year.

EXAMPLE:

Highest discharge rating = 2400

f = factor

$$\frac{2400}{f} = 50 \quad f = \frac{2400}{50} = 48$$

- (2) Stream Classification (Maximum Value -- 10 Points) (Select One). The proposed project will comply with established water quality standards and priority points will be awarded on the basis of the classification assigned the waters primarily affected as follows:
 - (A) Class "SA" (shellfish waters).....10
 - (B) Class "AH" "WS - II" or "WS - III" (water supply source)..... 8
 - (C) Class "B" or "SB" (bathing waters) or "C = Trout"..... 6
 - (D) Class "C" or "SC" (fishing)..... 4
- (3) Nutrient Requirement for Treatment Facilities - (Maximum Value -- 10 Points). The existing wastewater treatment facility is required by permit to add units for the removal of nutrients from its effluent.....10
- (4) Compliance Schedule (Maximum Value -- 10 Points). The applicant has been issued a waste discharge approval document which contains a compliance sched-

ule providing for construction to be initiated on or before the beginning of the next fiscal year or a condition restricting new connections.....10

- (5) Regional System (Maximum Value -- 20 Points) Sum of Items (A) to (D) of this Subdivision

(A) A lead agency or regional management authority has been established within the facility planning area. 5

(B) Area which the grant applicant is responsible for providing treatment works:

(i) less than 33% of facility planning area

(ii) 33% to 67% of facility planning area

(iii) more than 67% of facility planning area 5

(C) Number of incorporated cities, towns or villages served by applicant:

(i) 2 or less 4

(ii) 3 3

(iii) 4 or more 5

(D) Population served by applicant:

(i) less than 10,000 4

(ii) 10,000 to 50,000 3

(iii) more than 50,000 5

- (6) Financial Need of Applicant (Maximum Value -- 15 Points). The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{150 (\text{Total Bonded Indebtedness}) + \text{Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

150 is used in the formula to provide point values for this categorical element.

- (b) Interceptors and Collection Sewers

- (1) Discharge Inventory and Project Priority Factors - (Maximum Value -- 50 Points). The number of points assigned under Subdivision (b)(1) of this Rule will be determined from the discharge inventory rating assigned the project as determined in .0103(a)(1)(C) of this Rule and multiplied by the following project priority factors:

PROPOSED RULES

(A) A project priority factor of one will be used for interceptors required to meet water quality standards and which must comply with enforceable provisions of the law (eliminate existing discharge).

(B) A project priority factor of three-fourths will be used for interceptors ~~and collection systems~~ to eliminate septic tank systems in areas where there is a public health hazard or demonstrated water pollution problems.

(C) A project priority factor of one-half will be used for interceptors needed to provide for normal growth and expansion of communities.

~~(D) A project priority factor of one-fourth will be used for expansion of wastewater collection systems and/or separation of combined sewers.~~

(2) Public Need (select one) (Maximum Value -- 20 Points).

(A) Proposed sewer will eliminate a wastewater treatment plant or other discharge20

(B) Proposed sewer will eliminate one or more pump stations15

(C) Proposed sewer will serve an area presently unsewered10

(3) Capacity Need (select one) (Maximum Value -- 5 Points).

(A) The proposed sewer is needed to parallel or replace an existing sewer which does not have the capacity to handle the present flow 5

(B) The proposed sewer is needed to parallel or replace an existing sewer which does not have the capacity to handle the 20 year design flow 2

(4) Public Health Need (Maximum Value -- 10 Points).

(A) Project will eliminate a documented public health hazard 5

(B) Project will eliminate a documented water pollution problem 5

Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Environmental Management Commission may award a high priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard in a low income-high density area.

(5) Service Area Need (Maximum Value -- 15 Points).

(A) Soils Limitation (select one)

Using the most recent soil survey maps available, the limitation for septic tank use associated with the major soil classifica-

tion in the proposed service area will be used to determine the priority as follows:

- (i) Slight 3
- (ii) Moderate 5
- (iii) Severe or very severe 7

(B) Population Density (select one)

Using the population densities presented in the 201 Facilities Plan, the priority for population density in each proposed project area will be determined as follows:

- (i) Less than seven persons per acre 4
- (ii) Seven persons per acre or more 8

Statutory Authority G.S. 143-215.3(a)(4); 159G-5(c).

.0104 DEFINITIONS

Unless the context otherwise requires, the following terms used in these regulations are defined as follows:

(1) "Approval document" means a temporary permit, permit, consent order, or assurance of voluntary compliance issued by the Commission or a national pollutant discharge elimination system permit issued by the Environmental Protection Agency or the Director, Division of Environmental Management.

(2) "Environmental Management Commission" or "commission" has the same meaning as in 1 NCAC 22 .0102(2).

(3) "~~Facility planning area~~" means the area either tentatively or formally delineated by the Director, Division of Environmental Management, pursuant to Section 204 of the Federal Water Pollution Control Act Amendments of 1972 and 1977. In the case of non-complex planning areas not delineated, the planning area includes that area within the corporate boundary of the unit of government plus any growth areas or potential growth areas in proximity to the existing boundary. "Facility Plan" means those necessary plans and studies which directly relate to the construction of wastewater treatment works.

(4) "Funding list" means a listing of those projects selected from the priority list which the Commission will certify for federal construction grant funding during a particular fiscal year. "Intended Use Plan" means an annual plan to identify the proposed uses of the amounts available in the State Revolving Fund.

(5) "Lead agency" means a unit of government which has been designated by formal resolution of the governing body of all other units of government within a facility plan-

ning or larger area to carry out facility planning in the case of step I grants or to carry out the operation and maintenance of all publicly owned wastewater treatment works within the entire facility planning area for step II or step III grants. "Municipal Compliance Initiatives" means a diagnostic program to prevent non-compliance with water quality standards.

(6) ~~(6)~~ "Population served" means population of a unit of government according to the latest federal census in those cases in which census information for the unit is available or the estimated population served by the treatment facility for those units of government for which federal census information is not available.

(6) ~~(7)~~ "Priority list" means a listing in descending order of the total number of points assigned under Regulations .0103(a) and .0103(b) of this Section to each project in the state:

- (a) which has a discharge inventory rating value of 250 or more, or
- (b) for which an application is filed within the period provided by these regulations, or
- (c) for which an approval document has been issued and which provides for the initiation of construction of a treatment works improvement on or before the beginning of the next fiscal year, or
- (d) at which the existing degree of treatment provided is primary or less.

(7) ~~(8)~~ "Regional management authority" means a unit of government which has jurisdiction for providing the wastewater treatment works for three or more units of government.

(8) "State Revolving Fund" means a fund authorized by Title VI of the Federal Clean Water Act Amendments of 1987 for the purpose of providing assistance for water pollution control activities.

(9) ~~(9)~~ "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, sewer district, sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.

(9) ~~(10)~~ "Wastewater collection system" has the same meaning as in 1 NCAC 22 .0102(20).

(10) ~~(11)~~ "Wastewater treatment works" has the same meaning as in 1 NCAC 22 .0102(21).

Statutory Authority G.S. 143-215.3(a)(4); 159G-5(c).

.0105 EFFECTIVE CONTINGENT UPON FEDERAL FUNDS ALLOCATED

These regulations shall be effective for fiscal year ~~1979~~ 1990 and succeeding year allocations of federal grant funds allocated to the State of North Carolina. years of the State Revolving Fund Program.

Statutory Authority G.S. 143-215(a)(14); 159G-5(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the EHNRC - Division of Coastal Management intends to amend rule(s) cited as 15A NCAC 7J .0204, .0301 - .0302, .0602; and adopt rule(s) cited as 15A NCAC 7J .0210 - .0211; 7M .0306.

The proposed effective date of this action is July 1, 1990.

The public hearing will be conducted at 10:00 a.m. on March 29, 1990 at Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, NC 28480

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, PO 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 .0200 - APPLICATION PROCESS

.0204 PROCESSING THE APPLICATION

(a) On receipt of a CAMA major development and or dredge and fill permit application by the

PROPOSED RULES

Department, a letter shall be sent to the applicant within a reasonable time acknowledging receipt.

(b) Application processing will begin when an application is accepted as complete. Before an application will be accepted as complete, the following requirements must be met;

- (1) a current application form must be submitted;
- (2) all questions on the application form must be completed or the letters "N/A" must be placed in each section that does not apply;
- (3) an accurate work plan as described in 15A NCAC 7J .0203 herein must be attached to all CAMA major development and/or dredge and fill permit applications;
- (4) a copy of a deed or other instrument under which the applicant claims title must accompany a CAMA major development and/or dredge and fill permit application;
- (5) notice to adjacent riparian landowners must be given as follows:
 - (A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for the proposed development must be included in a CAMA major development and/or dredge and fill permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments will be considered by the Department in reaching a final decision on the application.
 - (B) For CAMA minor development permits, the applicant must give actual notice of his intention to develop his property and apply for a CAMA minor development permit to all adjacent riparian landowners. Actual notice can be given by sending a certified letter, informing the adjoining property owner in person or by telephone, or by using any other method which satisfies the Local Permit Officers that a good faith effort has been made to provide the required notice;
- (6) the application fee must be paid as set out in this Subparagraph:
 - (A) Major development permit - a check or money order payable to the Department for one hundred dollars (\$100.00), except where permits are eligible for expeditious review, in which case the fee will be twenty-five dollars (\$25.00);
 - (B) Minor development permit - a check or money order payable to the permit-letting agency in the amount of twenty-five dollars (\$25.00). Monies so collected may

be used only in the administration of the permit program; and

- (7) any other information the Department or local permit officer deems necessary for a thorough and complete review of the application must be provided. Any application not in compliance with these requirements will be returned to the applicant along with a cover letter explaining the deficiencies of the application and will not be considered accepted until it is re-submitted and determined to be complete and sufficient. If a local permit officer receives an application for a permit that the local permit officer lacks authority to grant, the permit officer shall return the application with information as to how the application may be properly considered.
- (8) For development proposals subject to review under the North Carolina Environmental Policy Act (NCEPA), NCGS 113A-100 et. seq., the permit application will be complete only on submission of the appropriate environmental assessment document.
 - (c) Upon acceptance of a major development and/or dredge and fill permit as complete, the Department shall, within a reasonable time, send a letter to the applicant setting forth the data on which acceptance was made.
 - (d) If the application is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project, the processing will be terminated pending receipt of the necessary changes or necessary information from the applicant. During the pendency of any termination of processing, the permit processing period will not run. If the changes or additional information significantly alters the project proposal, the application will be considered new and the permit processing period will begin to run from that date.
 - (e) Any violation occurring at a proposed project site for which an application is being reviewed will be processed according to the procedures in 7J .0408 - 0410. If the violation substantially altered the proposed project site, and restoration is deemed necessary, the applicant will be notified that processing of the application will be suspended pending compliance with the notice of required restoration. Satisfactory restoration of any unauthorized development that has substantially altered a project site is deemed necessary to allow a complete review of the application and an accurate assessment of the project's potential impacts. The applicant

will be notified that permit processing has resumed, and that a new processing deadline has been established once the required restoration has been deemed satisfactory by the Division of Coastal Management or Local Permit Officer.

(f) If during the public comment period a question is raised as to public rights of access across the subject property, the Division of Coastal Management will examine the access issue prior to making a permit decision. Any individual or governmental entity initiating action to judicially recognize a public right of access must obtain a court order to suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing will continue.

Statutory Authority G.S. 113-229; 113A-2.

.0210 REPLACEMENT OF EXISTING STRUCTURES

Replacement of existing structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and will require CAMA permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the local building inspection office. Replacement of structures can be allowed if they are found to be consistent with current CRC rules.

Statutory Authority G.S. 113A-103(5)(b)(5); 113A-107(a),(b).

.0211 NON-CONFORMING DEVELOPMENT

A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is inconsistent with current CRC rules, and, was built prior to the effective date(s) of the regulation(s) with which it is inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

- (1) the structure will not be enlarged beyond its original dimensions;
- (2) the structure will serve the same or similar use;
- (3) there are no practical alternatives for replacing the structure to provide the same or similar benefits in compliance with current regulations; and
- (4) the structure will be rebuilt so as to comply with current regulations to the maximum extent possible.

Statutory Authority G.S. 113A-107(a),(b).

SECTION .0300 - HEARING PROCEDURE

.0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING

(a) Under G.S. 113A-121.1(a), only the following persons are entitled to appeal a permit decision by filing a petition for a contested case hearing as provided in 15A NCAC 7J .0302:

- (1) any applicant for a minor or major development permit; and
- (2) the secretary in the case of a decision by a local official on a minor development permit.

(b) Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision under Paragraph (a) of this Rule may file a request for such a hearing with the Chairman of the Coastal Resources Commission. The hearing request must be filed with the Director, Division of Coastal Management, Department of Environment, Health, and Natural Resources (DEHNR), P.O. Box 27687, Raleigh, NC 27611, and a copy thereof must be filed with the Office of General Counsel, DEHNR, P.O. Box 27687, Raleigh, NC 27611. The Commission hereby delegates to the Chairman the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing. The Chairman shall grant a hearing upon finding that the criteria in G.S. 113A-121.1(b) have been satisfied. A person whose hearing request is granted may file a petition for a contested case hearing as provided in 15A NCAC 7J .0302. A denial of a request for a hearing may be appealed as provided in G.S. 113A-121.1(b).

Statutory Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124.

.0302 PETITION FOR CONTESTED CASE HEARING

(a) Any person who is entitled or authorized to appeal a permit decision under Rule .0301(a) may file a petition for a contested case hearing with the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, NC 27604. The petition must be filed within 20 days of the permit decision being appealed as provided in G.S. 113A-121.1(a).

(b) Any person who has been granted a hearing by the Chairman of the Coastal Resources Commission under Rule .0301(b) may file a petition for a contested case hearing with the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, NC 27604. The petition must be filed within 20 days after the Chairman's decision on

PROPOSED RULES

the hearing request as provided in G.S. 113A-121.1(b).

(c) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the Director, Division of Coastal Management (DEHNR), P.O. Box 27687, Raleigh, NC 27611 and on the Office of General Counsel, DEHNR, P.O. Box 27687, Raleigh, NC 27611. If a minor development permit is appealed, a copy of the petition shall also be served on the local permit officer. Failure to file any petition within the time periods in Paragraphs (a) and (b) of this Rule constitutes a waiver of the opportunity for a contested case hearing.

(d) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any minor permit decision which is being appealed to the Director. The record shall include at a minimum the elements indicated in 15A NCAC 7I .0508(c).

Statutory Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124.

SECTION .0600 - DECLARATORY RULINGS AND PETITIONS FOR RULEMAKING

.0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be ~~sent to~~ filed with the Director, Division of Coastal Management, ~~Department of Natural Resources and Community Development, Department of Environment, Health, and Natural Resources (DEHNR), P.O. Box 27687, Raleigh, North Carolina 27611 and also the Office of General Counsel, DEHNR, P.O. Box 27687, Raleigh, North Carolina 27611.~~ All requests shall include the following: the aggrieved person's name and address, the rule, statute or order for which a ruling is desired, and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute.

(b) A request for a ruling on the applicability of a rule, order, or statute must include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a commission rule must express the interested person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request.

Statutory Authority G.S. 113A-124; 150B-17.

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

.0306 COMPLIANCE WITH THE NORTH CAROLINA ENVIRONMENTAL POLICY ACT

The beach access program shall comply with the requirements of the North Carolina Environmental Policy Act (NCEPA) and rules adopted by the Department of Environment, Health, and Natural Resources concerning NCEPA implementation as set out in 15A NCAC 1C .0201 - .0504. Future amendments by the Department shall be deemed to be incorporated into this Rule pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 113A-2; 113A-124.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to repeal rule(s) cited as 21 NCAC 32D .0001 - .0009; and adopt rule(s) cited as 21 NCAC 32L .0001 - .0012.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 1:30 p.m. on March 5, 1990 at NC Board of Medical Examiners, 1313 Navaho Drive, Raleigh, N.C. 27609.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before March 1, 1990, to the following address: NC Board of Medical Examiners, Administrative Procedures, 1313 Navaho Drive, Raleigh, NC 27609.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32D - APPROVAL OF ASSISTANT TO PHYSICIAN (REPEALED)

- .0001 DEFINITIONS
- .0002 APPLICATION FOR APPROVAL
- .0003 REQUIREMENTS FOR APPROVAL
- .0004 MORAL CHARACTER
- .0005 REQUIREMENTS FOR RECOGNITION OF TRAINING PROGRAMS
- .0006 TERMINATION OF APPROVAL

.0007 METHOD OF PERFORMANCE

.0008 FEES

.0009 FORMS

Statutory Authority G.S. 90-15; 90-18(13); 90-18.1.

**SUBCHAPTER 32L - APPROVAL OF
PHYSICIAN ASSISTANTS**

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Physician Assistant or PA" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis, and treatment.
- (2) "Physician Assistant Applicant" means the individual upon whose behalf an application is submitted who may function before approval by the Board in the same manner in which he functioned as a student under strict supervision as outlined in Rule .0003 of this Subchapter.
- (3) "Supervision" means the physician's function of overseeing, managing, and directing the medical acts performed by the PA as outlined in Rule .0009 of this Subchapter.
- (4) "Primary Supervising Physician" means the physician who, by signing the application to the Board, accepts full medical administrative responsibility for the PA's medical activities and conduct at all times whether he personally is providing supervision or supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the PA is sufficiently qualified by education and training to perform all medical acts required of the PA and shall assume total responsibility for the PA's performance in the particular field or fields in which the PA is expected to perform medical acts.
- (5) "Back-up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to be available to supervise the PA's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back-up Supervising Physician is responsible for the activities of the PA only when he is providing supervision.

- (6) "Formulary" means the document which lists generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites.

Statutory Authority G.S. 90-18(13); 90-18.1.

**.0002 PHYSICIAN ASSISTANT APPLICANT
STATUS**

The Physician Assistant Applicant status may be used only by an individual whose application for approval as a Physician Assistant has been received in the Board's office. The Physician Assistant Applicant status may not be used to "try out" a job or work temporarily in a job in which the individual does not intend to obtain Board approval. In the event the individual leaves the job in which he has worked as a Physician Assistant Applicant before Board approval is granted, the individual must submit a written explanation to the Board before he may work in the Physician Assistant Applicant status in another job.

- (1) The Physician Assistant Applicant status applies to:
 - (a) an individual newly graduated from a PA training program; or
 - (b) an individual coming to North Carolina for the first time who has worked previously as a PA in another state.
- (2) A Physician Assistant Applicant, described in Subparagraph (1) of this Rule, may function before approval by the Board under strict supervision with the following limitations:
 - (a) wear identification as a "Physician Assistant Applicant";
 - (b) have no prescribing privileges;
 - (c) have immediate physician countersigning of all notations in all patient charts in all practice locations;
 - (d) have no remote practice sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)
- (3) The Physician Assistant Applicant status does not apply to an individual previously approved as a PA in North Carolina in another practice situation which has terminated who is seeking approval in a new job. The previously approved PA may function prior to approval of the new job as follows:
 - (a) wear identification as a "Physician Assistant";
 - (b) use prescribing number previously issued by the Board for prescribing privileges;

- (c) have physician countersigning of all notations in all patient charts in all practice locations within 24 hours of PA/patient contact.

Statutory Authority G.S. 90-18(14).

.0003 REQUIREMENTS FOR PA APPROVAL

(a) Before being approved by the Board, an applicant must:

- (1) Be of good moral character.
- (2) Give evidence that he has successfully completed a PA training program recognized by the Board as set forth in Rule .0006 of this Subchapter.

(b) Initial approval may be denied for any of the reasons set forth in Rule .0007 of this Subchapter, as well as failure to satisfy the Board of the qualifications of the PA training program from which the applicant graduated as set forth in Rule .0006 of this Subchapter.

Statutory Authority G.S. 90-18(13).

.0004 APPLICATION FOR PA APPROVAL

(a) Application for approval of a PA must be made upon forms supplied by the Board and must be submitted jointly by the PA and supervising physicians with whom the PA will work.

(b) Application forms submitted to the Board must be complete in every detail and in every supporting document required must be submitted by the deadline set by the Board in order that the application may be considered appropriately.

(c) If for any reason a PA discontinues working under the supervision of the primary physician who submitted the application under which the PA is approved, the Board shall be notified and the PA's approval shall automatically terminate until such time as a new application is approved by the Board.

(d) The following applications for changes in the PA practice may be administratively approved by the Board's staff and reported to the Board at each meeting:

- (1) routine job changes of a PA previously approved in N.C.;
- (2) additional job under a new primary supervising physician;
- (3) change of primary supervising physician when that is the only change taking place in a currently approved PA practice site;
- (4) addition of back-up supervising physicians to a currently approved PA practice site;
- (5) addition of practice sites under the supervision of the currently approved primary supervising physician;

(6) temporary approval for second site on relief basis not to exceed two months.

(e) Administrative approval is not automatic for the applications listed in this Rule. The changes may be administratively approved at the discretion of the Board's staff. Changes cannot be processed administratively but must be considered by the Board as follows: if any of the background questions are answered "yes" by the PA or primary supervising physician; or if the PA or any of the supervising physicians listed have an investigative, complaint, or public file.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0005 PRESCRIBING PRIVILEGES

(a) The PA Applicant and the supervising physicians shall acknowledge in the application that they are familiar with laws and rules of the Board regarding prescribing; and shall agree to comply with these laws and rules by incorporating the laws and rules, including the Formulary, into their written standing orders.

(b) The generic categories listed in the Formulary are based on the "American Hospital Formulary Service" published by the American Society of Hospital Pharmacists. The Formulary is adopted by reference by the Board as a part of this Rule.

(c) The prescribing stipulations contained in these rules and in the Formulary apply to writing prescriptions, ordering the administration of medications in out-patient and inpatient settings, and dispensing medications.

Approval to dispense must be obtained from the Board of Pharmacy.

(d) Prescribing stipulations are as follows:

(1) Controlled Substances:

(A) No controlled substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed, ordered, or dispensed.

(B) Verbal orders given to the PA by the supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the PA just as an RN may transcribe a physician's verbal order into a patient chart.

(2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Subparagraph (3)(B) of this Rule; with the following exceptions:

(A) Insulin;

(B) Immunizations (DPT, MMR, -11HB);

- (C) Tetanus toxoid, DT, or hyperimmune serum;
- (D) Epinephrine;
- (E) Benadryl.
- (3) Excluded Drugs:
 - (A) Any pure form or combination of the generic classes of drugs listed in the Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is listed as excluded from the Formulary.
 - (B) Drugs excluded by the Formulary, except controlled substances, may be prescribed by the PA only upon specific written or verbal orders from the supervising physician for a specific patient given before the prescription or order is issued by the PA. Such a prescription or order must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.
- (4) Refills - A prescription may not indicate a refill with the exception of birth control medications which may be issued for a period not to exceed one year.
- (5) Dosage Units - Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one month supply with the exception of birth control medications which may be issued for a period not to exceed one year.
- (6) Prescription Notations - Every prescription must be noted on the patient's chart. A second prescription for the same medication may be authorized by telephone by the PA and must be entered on the patient's chart and countersigned by the supervising physician within the specified countersigning time approved by the Board.
- (7) Prescribing Number - A prescribing number is assigned by the Board to a PA upon approval by the Board. This number must appear on all prescriptions issued by the PA. The prescribing number is used as the PA's Approval Number.
- (8) Prescription Blank Format - All prescriptions issued by a PA should contain the name and telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the PA, as well as all information required by law. A suggested prescription format is included in the application packet.
- (9) Pre-signed Prescription Blanks - The supervising physician shall not leave pre-

signed prescription forms for use by the PA.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0006 REQUIREMENTS FOR RECOGNITION OF PA TRAINING PROGRAMS

All PA training programs approved by the American Medical Association Council on Medical Education (AMA) are recognized by the Board.

- (1) Application for recognition of a PA training program not approved by the AMA shall be made by letter and supporting documents from the Director of the program and must demonstrate to the satisfaction of the Board that such program fulfills the following requirements:
 - (a) Sponsorship - The training program must be sponsored by a college or university with appropriate arrangements for the clinical training of its students, such as a hospital maintaining a teaching program. There must be evidence that the program has education as its primary orientation and objective.
 - (b) Director - The program must be under the supervision of a qualified director, who has at his disposal the resources of competent personnel adequately trained in the administration and operation of educational programs.
 - (c) Facilities - Adequate space, light and modern equipment must be provided for all teaching functions. A library, containing up-to-date textbooks, scientific periodicals, and reference material pertaining to clinical medicine, its underlying scientific disciplines, and its specialties, shall be readily accessible to students and faculty.
 - (d) Curriculum - The curriculum must provide adequate instruction in the basic sciences underlying medical practice to provide the trainee with an understanding of the nature of disease processes and symptoms, abnormal tests, and drug actions. This must be combined with instruction, observation, and participation in history taking, physical examination, and therapeutic procedures. This should be in sufficient depth to enable the graduate to integrate and organize historical and physical findings. The didactic instruction shall follow a planned and progressive outline and shall include an appropriate mixture of classroom lectures, textbook assignments, discussions, demonstrations, and similar activities. Instruction shall

include practical instruction and clinical experience under qualified supervision sufficient to provide understanding of a skill in performing those clinical functions which the PA may be asked to perform. There must be sufficient evaluative procedures to assure adequate evidence of competence. Although the student may concentrate his effort and his interest in a particular specialty of medicine, the program must insure that he possesses a broad general understanding of medical practice and therapeutic techniques.

- (e) Length of Program - Although some variation may be possible for the individual student, dependent on aptitude, previous education and experience, the curriculum shall be designed to require two or more academic years for completion.
- (f) Faculty - The program must have a faculty competent to teach the didactic and clinical material which comprises the curriculum. The faculty shall include at least one instructor who is a graduate of medicine, licensed to practice in the location of the school, whose training and experience enable him to properly supervise progress and teaching in clinical subjects. He shall be in attendance for sufficient time to insure proper exposure of the student to clinical teaching and practice. The program may utilize instructors other than physicians, but sufficient exposure to clinical medicine must be provided to insure understanding of the patient, his problem, and the diagnostic and therapeutic responses to this problem.
- (g) Entrance Requirements - The program must, through appropriate entrance requirements, insure that candidates accepted for training possess:
 - (i) ability to use written and spoken language in effective communication with physicians, patients, and others;
 - (ii) quantification skills to insure proper calculation and interpretation of tests;
 - (iii) behavioral characteristics of honesty and dependability; and
 - (iv) high ethical and moral standards, in order to safeguard the interest of patients and others.
- (2) To retain its recognition by the Board, a recognized program shall:
 - (a) make available to the Board the operating budget and yearly summaries of case loads and educational activities done by clinical affiliates, including volume of outpatient visits and number of inpatients;

- (b) maintain a satisfactory record of the entrance qualifications of and evaluations of all work done by each student, which shall be available to the Board; and
 - (c) notify the Board in writing of any major changes in the curriculum or a change in the directorship of the program.
- (3) Recognition of a program may be withdrawn when, in the opinion of the Board, the program fails to maintain the educational standards described in this Rule. When a program has not been in operation for a period of two consecutive years, recognition will automatically be withdrawn. Withdrawal of recognition from a program will in no way affect the status of a PA who graduated from the program while it was recognized and who has been approved by the Board.

Statutory Authority G.S. 90-18(13).

.0007 TERMINATION OF PA APPROVAL

The approval of a PA may be terminated by the Board when, after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, it shall find:

- (1) that the PA has held himself out or permitted another to represent him as a licensed physician;
- (2) that the PA has engaged in the performance of medical acts other than at the direction of, or under the supervision of, a physician licensed by the Board who is approved by the Board to be a supervising physician;
- (3) that the PA has performed a medical act for which the PA is not approved or for which the PA is not qualified by education and training to perform, including prescribing, ordering, or dispensing drugs not allowed by the Formulary;
- (4) that the PA is impaired physically, mentally, or professionally as a result of using mind-altering chemicals;
- (5) that the PA has been convicted in any court, of a felony or other criminal offense;
- (6) that the PA is adjudicated mentally incompetent or that the PA's mental or physical condition renders the PA unable to safely function as a PA;
- (7) that the PA has failed to comply with any of the provisions of this Subchapter.

Statutory Authority G.S. 90-18(13).

.0008 METHOD OF IDENTIFICATION

The PA shall wear an appropriate name tag spelling out the words "Physician Assistant".

Statutory Authority G.S. 90-18(13).

.0009 SUPERVISION OF A PA

Supervision shall be provided by the responsible physician as follows:

- (1) Availability:
 - (a) The supervising physician shall be available for direct communications by radio, telephone, or telecommunications.
 - (b) The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the PA.
 - (c) A PA shall refer a patient to another health provider other than an approved supervising physician only on the order of an approved supervising physician.
- (2) Written Standing Orders:
 - (a) The supervising physician shall provide in each practice location, for use by the PA and for referral by other personnel, written standing orders and drug protocols to cover most commonly encountered problems in the practice setting.
 - (b) The written standing orders shall include a predetermined plan for emergency services.
- (3) Countersigning:
 - (a) The time interval between the PA's contact with the patient and chart review and countersigning by the supervising physician shall be 72 hours.
 - (b) A longer countersigning time interval may be considered by the Board upon specific request. The request should explain the practice circumstances which necessitate the longer countersigning interval.
 - (c) All entries by a PA into patient charts in all approved practice locations must be countersigned by the supervising physician. Entries include but are not limited to: progress notes; treatment rendered; tests or procedures ordered; and notations of prescriptions or orders, and drugs dispensed or administered.
- (4) Supervision Arrangements:
 - (a) If the PA is to perform duties away from the supervising physician, the application must clearly specify the circumstances which would justify this action and the supervisory arrangements established to protect the patient.
 - (b) Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the PA and the supervising physician.
- (5) Supervising Physicians:

- (a) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.
- (b) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise physician assistants in the non-training situation if fully licensed.
- (c) All physicians who may supervise the PA in any manner must be approved by the Board before PA supervision occurs.
- (6) The PA must be prepared to demonstrate upon request to a member of the Board, or its delegates, the ability to perform the medical acts assigned by the supervising physician.

Statutory Authority G.S. 90-18(13).

.0010 ANNUAL REGISTRATION OF PA APPROVAL

- (a) Physician Assistants approved under these rules shall register their approval annually with the Board by July 1 of each year on forms supplied by the Board and shall be accompanied by a registration fee of thirty-five dollars (\$35.00).
- (b) In the event failure to register continues for a period of 30 days, formal action may be taken against the approval of the PA by the Board after notice and hearing in accordance with G.S. 150B-38.

Statutory Authority G.S. 90-18(13).

.0011 FEES

- (a) An application fee of one hundred and fifty dollars (\$150.00) shall be paid at the time of the initial application for approval and each subsequent application for job change.
- (b) An application fee of one hundred dollars (\$100.00) shall be paid at the time of application for a change of primary supervising physician.
- (c) The fee for annual registration, due July 1, is thirty-five dollars (\$35.00).
- (d) No portion of the fees in this Rule is refundable.

Statutory Authority G.S. 90-15.

.0012 PA FORMS

The following documents regarding physician assistants may be obtained from the Board's office:

- (1) Rules for Approval of Physician Assistants, Subchapter 32L;
- (2) Formulary;

PROPOSED RULES

- (3) North Carolina Laws Regarding Physician Assistants, G.S. 90-18(13) and 90-18.1;
- (4) Application for PA Approval;
- (5) Statement of Approval, upon being approved;
- (6) Application for Annual Registration, mailed during June to all Physician Assistants approved by May 1;
- (7) Certificate of Registration, upon registering.

Statutory Authority G.S. 150B-11.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Pharmacy intends to amend rule(s) cited as 21 NCAC 46 .1317, .1503, .2001, .2008, .2502; and adopt rule(s) cited as 21 NCAC 46 .1807, .2601 - .2607, .2701 - .2704, .2801 - .2808.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted:

March 19, 1990
7:00 p.m.
Institute of Pharmacy
UNC-CH
Chapel Hill, NC

March 20, 1990
2:00 p.m.
Institute of Pharmacy
UNC-CH
Chapel Hill, NC

March 27, 1990
10:00 a.m. & 7:00 p.m.
Sheraton Airport Plaza Hotel
Charlotte, NC

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is: P.O. Box 459, Carrboro, NC 27510. Any person may file a written submission of comments or argument at any time until April 26, 1990.

CHAPTER 46 - BOARD OF PHARMACY

SECTION .1300 - GENERAL DEFINITIONS

.1317 DEFINITIONS

The definitions of various terms used in these rules are found in Article 4A of Chapter 90 of the General Statutes, or are as follows:

- (1) Approved School or College of Pharmacy. A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.
- (6) Graduate of an Approved School or College of Pharmacy. A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English As A Foreign Language.

Statutory Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.15; 90-85.21; 90-85.38; 90-85.40.

SECTION .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

.1503 EXPERIENCE IN PHARMACY

(b) All practical pharmacy experience to be acceptable must be acquired under the general conditions approved by the Board as follows:

- (4) Practical experience shall be credited only when it has been obtained in a pharmacy or in a program location holding a pharmacy permit and approved by the Board for that purpose. Exemptions may be granted by the Board upon application.

Statutory Authority G.S. 90-85.14; 90-85.15; 90-85.38.

SECTION .1800 - PRESCRIPTIONS

.1807 FACSIMILE TRANSMISSION OF PRESCRIPTION ORDERS

Prescription orders may be transmitted using a facsimile ("FAX") machine, provided that:

- (1) Only orders bearing the signature of the prescriber are transmitted;
- (2) A written contract exists between the transmitting facility and the receiving pharmacy which provides for the use of facsimile machines;
- (3) The contract specified in Subparagraph (2) of this Rule has provisions for security to

prevent unauthorized dispensing of pharmaceuticals; and

- (4) The pharmacist-manager maintains security of the process including retention of readable records for the period of time required by law and verification of orders if indicated by the circumstances.

Statutory Authority G.S. 90-85.6(a); 90-85.32.

SECTION .2000 - ADMINISTRATIVE PROVISIONS

.2001 RIGHT TO HEARING

(a) When the Board acts or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person notice of the right to a hearing by mailing by certified mail to that person at the last known address of that person a notice of the proposed action and a notice of a right to a hearing.

(b) Prior to issuing the notice called for in Paragraph (a) of this Rule, and with the consent of the party or parties, the Board may attempt to settle disputes through the informal procedures set out in Rule .2008(a) of this Section.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-22; 150B-38; 150B-41.

.2008 INFORMAL PROCEDURES

(a) Prior to issuing a notice of hearing, the Board and the party or parties may agree to conduct a conference in which a member of the Board and the party or parties meet to consider the possibility of disposing of the dispute without a hearing or any other matter as may aid in the prompt disposition of the matter. If such a conference is held, the Board, with the consent of the party or parties, may issue a consent order which recites the action taken at the conference. This consent order may dispose of the matter or set forth such matters as were agreed to between the parties that may expedite the hearing. All matters contained in the consent order must be agreed to by the party or parties and approved by the Board at its next regular meeting. The Board member who participated in the conference shall disqualify himself or herself in accordance with Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.

(b) After issuance of a notice of hearing, the Board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-22; 150B-41.

SECTION .2500 - MISCELLANEOUS PROVISIONS

.2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(h) When a pharmacy is to be closed permanently, it is the responsibility of the pharmacist-manager to inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and to return the pharmacy permit to the Board's offices within ten days of the closing date. It is the responsibility of the pharmacist-manager, jointly held with the pharmacy's owner (if the owner is other than the pharmacist-manager), to transfer prescription files to another pharmacy for maintenance of patient therapy and to inform the public of such transfer by posted notice or otherwise. Controlled substance records shall be retained for the period of time required by law.

(i) It is the responsibility of the pharmacist-manager to prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.

Statutory Authority G.S. 90-85.6; 90-85.21.

SECTION .2600 - DEVICES

.2601 DISPENSING

Devices, as defined in G.S. 90-85.3(e), shall be dispensed only in a pharmacy as defined in G.S. 90-85.3(q) or other place registered with the Board pursuant to G.S. 90-85.22.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

.2602 ORDERS

Devices as defined in G.S. 90-85.3(e) shall be dispensed only pursuant to an order from a practitioner. Such orders shall comply in all pertinent respects with G.S. 106-134.1(a) and G.S. 106-134.4(a) and (b).

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

.2603 EDUCATION AND TRAINING

Persons, other than pharmacists, who are authorized to dispense devices and who dispense devices shall demonstrate to the Board's satisfaction that they have received sufficient education and training in dispensing devices so that they can safely and properly dispense devices.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

.2604 RECORDS

All orders and records for devices shall conform in all pertinent respects with Board Rules .2301 through .2305 of this Chapter. In addition to the requirements of those rules, the serial numbers for all devices dispensed shall be preserved as part of the records.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

**.2605 REGISTRATION OF
NON-PHARMACISTS**

Registration of persons other than pharmacists dispensing devices, pursuant to G.S. 90-85.22, shall be issued by the Board to the person in charge of the location dispensing the devices. This person shall have responsibilities comparable to those of a pharmacist-manager pursuant to Board Rule .2502 of this Chapter, as applicable. Persons in charge shall keep on file for three years on the premises of each place where devices are dispensed all information related to warranties provided by manufacturers and the availability of repairs.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

.2606 CONVEYING WARNINGS

Persons in charge or pharmacists dispensing devices, as defined in G.S. 90-85.23, shall be responsible for promptly conveying to patients all pertinent warnings issued by government agencies or manufacturers.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

.2607 AVAILABILITY OF RECORDS

All records required to be kept by statute or regulation shall be available to Board inspectors as provided in Rule .1803 of this Chapter.

Statutory Authority G.S. 90-85.3(e) and (r); 90-85.6; 90-85.22.

SECTION .2700 - NUCLEAR PHARMACY

.2701 REQUIREMENTS

No pharmacist shall receive, possess or dispense radioactive drugs, except in accordance with the applicable federal statutes and regulations and these rules. The requirement of these rules are in addition to, and not in substitution for, other applicable provisions of the regulations of the United States Nuclear Regulatory Commission.

Statutory Authority G.S. 90-85.6.

.2702 DEFINITIONS

(a) Qualified Nuclear Pharmacist. A pharmacist currently licensed by the Board who meets the following standards:

- (1) Meets minimum standards of training for "authorized user status" of radioactive material in accordance with the licensure guide of the United States Nuclear Regulatory Commission;
- (2) Has received a minimum of 200 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from an approved college of pharmacy, including instruction in the following areas: radiation physics and instrumentation; radiation protection; mathematics of radioactivity; radiation biology; and radiopharmaceutical chemistry; and
- (3) Has a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist.

(b) Qualified Licensed Professional. A non-pharmacist, such as a physician, nurse or technologist, who possesses a current state license, if required, and who has sufficient training and experience to safely handle and dispense radiopharmaceuticals as defined by the respective requirements of the regulations of the NRC.

(c) Nuclear Pharmacy. A pharmacy providing radiopharmaceutical services, including such areas in a hospital, nursing home, sanitarium or clinic pharmacy.

(d) Radiopharmaceutical Service. The procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record-keeping and disposal of radiopharmaceuticals and other radioactive drugs.

(e) Radiopharmaceutical Quality Assurance. The performance of appropriate chemical, biological and physical tests on potential radio-

pharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records.

(f) Internal Test Assessment. Conducting those tests of quality assurance necessary to insure the integrity of the test.

(g) Authentication of Product History. Identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other radioactive drug.

(h) Radiopharmaceuticals. Radioactive drugs as defined by the United States Food and Drug Administration.

(i) Nuclear Pharmacy Practice. A patient-oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals.

Statutory Authority G.S. 90-85.6.

.2703 OBTAINING A NUCLEAR PHARMACY PERMIT

In order to obtain a nuclear pharmacy permit, the person seeking such a permit should submit an application to the Board certifying that he or she is a pharmacist currently licensed by the Board and that he or she meets the requirements of Rule .2702 of this Section. The application shall describe in detail the location, time and manner the contact hours required by Rule .2702(a)(2) and (3) of this Section were obtained by the applicant and shall be submitted under oath.

Statutory Authority G.S. 90-85.6.

.2704 REQ FOR PHARMACIES PROVIDING RADIOPHARMACEUTICAL SERVICES

(a) The permit to operate a pharmacy providing radiopharmaceutical services shall be issued by the Board only to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of a qualified nuclear pharmacist. A qualified nuclear pharmacist shall be responsible for all operations of the pharmacy related to radiopharmaceutical services and shall be in personal attendance at all times that the pharmacy renders radiopharmaceutical services.

(b) In emergency situations, and in the absence of a qualified nuclear pharmacist, designated qualified licensed professionals may have access

to the area designated as the nuclear pharmacy area, and these individuals may prepare single doses of radiopharmaceuticals for the immediate emergency only and must document such activities.

(c) The nuclear pharmacy area shall be secured from entry by unauthorized personnel.

(d) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radiopharmaceuticals in accordance with Section .2300 of this Chapter and the applicable regulations of the NRC.

(e) All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area which provides sufficient protection from radioactivity of all areas surrounding the nuclear pharmacy area. Detailed floor plans shall be submitted to the Board before approval of the nuclear pharmacy permit.

(f) Radiopharmaceuticals are to be dispensed only upon a prescription or medication order from a licensed medical practitioner authorized to possess, use and administer radiopharmaceuticals.

(g) In addition to other labeling requirements of the Board for non-radioactive drugs described in these rules, the container of a radiopharmaceutical shall also be labeled with:

- (1) The standard radiation symbol;
- (2) The words "CAUTION - RADIOACTIVE MATERIALS";
- (3) The radionuclide of the radiopharmaceutical contained therein;
- (4) The chemical form of the radiopharmaceutical contained therein;
- (5) The amount of radioactivity of the radiopharmaceutical contained therein and the date and time of the calibration of that radioactivity;
- (6) The date and time of the expiration of the radiopharmaceutical contained therein;
- (7) If the radiopharmaceutical is a liquid, the volume;
- (8) If the radiopharmaceutical is a solid, the number of capsules or weight contained therein;
- (9) If the radiopharmaceutical is a gas, the number of ampules or vials contained therein;
- (10) The name, address and telephone number of the nuclear pharmacy dispensing the radiopharmaceutical;
- (11) The prescription or lot number; and
- (12) The name of the pharmaceutical.

(i) The application for a permit to operate a nuclear pharmacy must be accompanied by certification that the applicant is the holder of a current approved license from the NRC and the

number of that license. Copies of the NRC inspection report shall be made available upon request for inspection by Board personnel.

(j) The library of a nuclear pharmacy shall contain, in addition to the volumes required by Rule .1601(a)(4)(K) of this Chapter, copies of current state and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

(k) All pharmacies performing Radiopharmaceutical Services shall have in effect a procedures manual setting forth the procedures and policies of the pharmacy regarding Radiopharmaceutical Quality Assurance. This manual shall at all times be readily available for review by Board personnel.

Statutory Authority G.S. 90-85.6.

SECTION .2800 - STERILE PHARMACEUTICALS

.2801 SCOPE AND PURPOSE

The purpose of this Section is to provide standards for the preparation, labeling, and distribution of sterile products by licensed pharmacists, pursuant to an order or prescription. These standards are intended to apply to all sterile products, notwithstanding the location of the patient (e.g., home, hospital, nursing home, hospice, doctor's office).

Statutory Authority G.S. 90-85.6.

.2802 DEFINITIONS

(a) Biological Safety Cabinet. A containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(b) Class 100 Environment. An atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air.

(c) Cytotoxic. A pharmaceutical that has the capability of killing living cells.

(d) Enteral. Within or by way of the intestine.

(e) Parenteral. Sterile preparation of drugs for injection through one or more layers of the skin.

(f) Sterile Pharmaceutical. A dosage form free from living microorganisms (aseptic).

Statutory Authority G.S. 90-85.6.

.2803 REQ FOR PHARMACIES DISPENSING STERILE PHARMACEUTICALS

All locations holding a pharmacy permit where sterile pharmaceuticals are dispensed must meet the following requirements:

- (1) The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile parenteral products. This area shall be structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.
- (2) The permit-holder preparing sterile parenteral products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:
 - (a) Appropriate environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;
 - (b) Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;
 - (c) Appropriate disposal containers for used needles, syringes, etc., and if applicable cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;
 - (d) When cytotoxic drug products are prepared, appropriate environmental control also includes appropriate biohazard cabinetry;
 - (e) Refrigerator-freezer with a thermometer;
 - (f) Temperature controlled delivery containers; and
 - (g) Infusion devices, if appropriate.
- (3) The permit-holder dispensing sterile pharmaceuticals shall maintain adequate inventories of the following supplies: Disposable needles, syringes, and other supplies need for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action; disposable, lint-free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, caps, gowns, and gloves.
- (4) In addition to the requirements of Rule .1601(a)(4)(K) of this Chapter, a permit-holder dispensing sterile pharmaceuticals shall have in its reference library the following reference materials: Handbook on Injectable Drugs (ASHP); King's Guide to

Parenteral Admixtures; American Hospital Formulary Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

Statutory Authority G.S. 90-85.6.

.2804 RESPONSIBILITIES OF PHARMACIST-MANAGER

The pharmacist-manager of a permit-holder where sterile pharmaceuticals are dispensed must be knowledgeable in the specialized functions of preparing and dispensing compounded, sterile pharmaceuticals, including the principles of aseptic technique and quality assurance. The pharmacist-manager shall be responsible for the development and continuing review of all policies and procedures, training manuals, and quality assurance programs. Additionally, the pharmacist-manager is responsible for assuring that there is a system for disposal of infectious waste in a manner so as not to endanger the public health.

Statutory Authority G.S. 90-85.6.

.2805 LABELING

In addition to the standard labeling requirements, containers of sterile pharmaceuticals dispensed to patients shall be labeled with instructions for storage to maintain sterility and, for cytotoxic drugs, appropriate warning labels.

Statutory Authority G.S. 90-85.6.

.2806 RECORDS AND REPORTS

The pharmacist-manager shall maintain access to and submit as appropriate such records and reports as are required to insure the patient's health, safety, and welfare. Such reports shall be readily available, maintained for two years, and subject to inspections by the Board or its agents.

Statutory Authority G.S. 90-85.6.

.2807 CYTOTOXIC DRUGS

The following additional requirements are necessary for those permit-holders that prepare cytotoxic drugs:

- (1) All cytotoxic drugs should be compounded in a vertical flow, Class II, biological safety cabinet. No other product should be compounded in this cabinet.

- (2) Protective apparel shall be worn by personnel compounding cytotoxic drugs. This shall include disposable masks, gloves, and gowns with tight cuffs.
- (3) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with the aseptic techniques required for preparing sterile products.
- (4) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.
- (5) Written procedures for handling both major and minor spills of cytotoxic agents must be developed and must be included in the policy and procedural manual for the permit-holder.
- (6) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and shipped in a manner to minimize the risk of accidental rupture of the primary container.

Statutory Authority G.S. 90-85.6.

.2808 QUALITY ASSURANCE

There shall be a documented, ongoing quality assurance control program that monitors personnel performance, equipment and facilities. Appropriate samples of finished products shall be examined to assure that the pharmacy is capable of consistently preparing sterile products meeting specifications. Such examination shall include testing for microbial contamination. Quality assurance procedures shall include: recall procedures; storage and dating of products; maintenance of a log of the temperature of the refrigerator; routine maintenance and report of laminar flow hood certification; replacement on a regular basis of the pre-filters for the clean air source with documentation of the replacement date; testing, with written documentation, of the in-product for microbial contamination; maintenance of written justifications for the chosen expiration date for compounded products; and regular quality assurance audits, including infection control and sterile technique audits.

Statutory Authority G.S. 90-85.6.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 9 - MOTOR FUELS TAX DIVISION

SUBCHAPTER 9F - DIVISIONAL RULES

.0001 LOCATION

(a) The Motor Fuels Tax Division is located in the Penmarc Building at 120 Penmarc Drive in Raleigh, North Carolina. The mailing address of the Division is P.O. Box 25000, Raleigh, North Carolina 27640.

(b) The Motor Fuels Tax Division has five field offices. They are located in:

- (1) Asheville, North Carolina;
- (2) Charlotte, North Carolina;
- (3) Fayetteville, North Carolina;
- (4) Greensboro, North Carolina;
- (5) Winston Salem, North Carolina.

History Note: Statutory Authority G.S. 105-430 through 105-449.56; 119-15 through 119-22; 143B-20; 143B-221; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

.0003 DIVISIONAL ORGANIZATION

The Motor Fuels Tax Division is administered by a director and assistant director. The Division is divided into three sections: administrative, office operations and audit section.

- (1) The administrative section includes the director, assistant director, and two secretaries. It is the responsibility of the director and assistant director to administer the entire operations of the Division. They handle personnel matters in conjunction with the section supervisors; devise rules and regulations; resolve controversial issues; conduct conferences with taxpayers and their representatives; represent the Department in hearings before the Secretary of Revenue and generally direct the activities of the Division.
- (2) The office operations section receives and processes gasoline, special fuels and highway fuel use reports as well as quarterly and annual refund claims for motor fuels. This section issues vehicle fuel registrations and temporary emergency permits and is responsible for the accounting functions. An administrative assistant directs the operations of this section.
- (3) The field audit section is responsible for making the necessary field audits for all schedules administered by the Motor Fuels Tax Division. The assistant director directs the operations of this section.

History Note: Statutory Authority G.S. 105-430 through 105-449.56; 119-15 through 119-22; 143B-10; 143B-221; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

SUBCHAPTER 9I - HIGHWAY FUEL USE TAX

SECTION .0100 - OPERATIONS

.0102 OPERATIONS OF VEHICLES EXCLUDED FROM REPORTS

(a) Every motor carrier shall report the operations of all subject vehicles in its fleet when calculating fuel used in North Carolina pursuant to G.S. 105-449.44 for purposes of filing the report required by G.S. 105-449.45, except that the motor carrier may exclude such vehicles that operate exclusively intrastate.

(b) The election to exempt intrastate vehicles shall remain in effect for at least four successive calendar quarters.

(c) Vehicles using special fuels that operate wholly within North Carolina must be reported on the appropriate special fuels report, i.e.; supplier, reseller, bulk user or user.

History Note: Statutory Authority G.S. 105-262;

105-449.32; 105-449.37; 105-449.45;
Eff. January 1, 1983;
Amended Eff. February 1, 1990; March 1, 1987.

**.0103 REGISTRATION CARDS AND
VEHICLE IDENTIFICATION MARKERS**

(a) Every "motor carrier", as defined by G.S. 105-449.37, that operates or causes to be operated a motor vehicle subject to G.S. 105-449.47 shall obtain a registration card and vehicle identification marker for each such vehicle before it is operated or caused to be operated on any street or highway in North Carolina. The "motor carrier" shall file all highway fuel use tax reports required under Article 36B.

(b) The lessee of a motor vehicle and not the lessor is a "motor carrier" except when a lessor of a motor vehicle gives written notice to the secretary that the lessor desires to be treated as a "motor carrier". When a vehicle subject to this Article is being operated under a lease of less than 30 days, the owner of the vehicle shall obtain the permit.

*History Note: Statutory Authority G.S. 105-262;
105-449.32; 105-449.37; 105-449.45;
Eff. January 1, 1983;
Amended Eff. February 1, 1990; March 1, 1987.*

**SECTION .0200 - NORTH CAROLINA FUEL
PURCHASES**

**.0201 N.C. RETAIL FUEL PURCHASE
INVOICES**

(a) North Carolina retail fuel purchase invoices must contain the following information:

- (1) Date of purchase;
- (2) Seller's name and address;
- (3) Purchaser's name (in the case of a lessee lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party);
- (4) Number of gallons; and total cost of fuel;
- (5) Fuel type; and
- (6) Company unit number or vehicle license plate number and state.

(b) In order for the motor carrier to obtain credit for retail tax paid purchases, a receipt or invoice, a credit card receipt, or microfilm microfiche, or computer imaging of the receipt or invoice must be retained by the motor carrier showing evidence of such purchases and tax having been paid.

(c) Invoices must be maintained for a period of at least three years for possible audit by agent of the North Carolina Department of Revenue.

*History Note: Statutory Authority G.S. 105-262;
105-449.10; 105-449.26; 105-449.32; 105-449.39;*

*Eff. January 1, 1983;
Amended Eff. February 1, 1990.*

.0202 WITHDRAWALS FROM BULK STORAGE

(a) A motor carrier maintaining bulk storage of North Carolina tax paid motor fuel is entitled to credit on the highway fuel use tax report based on the date the fuel is put into the motor vehicle, not on the date of purchase.

(b) A motor carrier who withdraws fuel from bulk storage must maintain withdrawal records containing the following information:

- (1) Date of withdrawal;
- (2) Number of gallons;
- (3) Fuel type;
- (4) Company unit number or vehicle license plate number and state; and
- (5) Purchase and inventory records to substantiate that tax was paid on all bulk purchases.

(c) Upon application by the motor carrier, the state may waive the requirement of unit numbers for fuel withdrawn from its own bulk storage and placed in its subject vehicles. The motor carrier must show that adequate records are maintained to distinguish fuel placed into subject vehicles from that placed into non-subject vehicles.

*History Note: Statutory Authority G.S. 105-262;
105-449.39;
Eff. January 1, 1983;
Amended Eff. February 1, 1990; May 1, 1987;
March 1, 1987.*

SECTION .0300 - CREDITS AND REFUNDS

.0302 REFUNDS

(a) The Secretary may make refunds at his sole discretion without prior audit or without having been furnished bond if the motor carrier has complied with the provisions of Subchapter V of the Revenue Laws of North Carolina and the rules and regulations promulgated thereunder for a period of one full prior registration year.

(b) Beginning with the first quarter of 1990, a motor carrier may request a refund when its credit for North Carolina tax paid fuel purchases for its subject vehicles exceeds its liability for fuel used in North Carolina by such vehicles. The motor carrier may request a refund for the excess by checking the designated block on the quarterly highway fuel use tax report form.

(c) A motor carrier may also request refund for any of the eight preceding quarters on which its credit exceeds its liability in North Carolina and on which it has not been previously refunded for such excess, or it has not used such excess as a credit for subsequent quarters on which it had incurred a net liability except that any refund for

excess purchases prior the first quarter of 1990 must be applied for on Form Gas. 1280 within 180 days from the end of the quarter for which the refund is requested.

History Note: Statutory Authority G.S. 105-262; 105-449.40; Eff. January 1, 1983; Amended Eff. February 1, 1990.

SECTION .0400 - TAX REPORTS AND MILES PER GALLON FACTORS

.0401 QUARTERLY TAX REPORT

(a) Persons operating vehicles subject to the highway fuel use tax must file a highway fuel use tax quarterly report.

(b) The report requires a computation of North Carolina fuel used. Credit is allowed on North Carolina tax paid fuels purchased.

(c) North Carolina fuel used is computed by dividing the fleet average miles per gallon of reported vehicles into the North Carolina miles operated by reported vehicles.

History Note: Statutory Authority G.S. 105-262; 105-449.39; 105-449.42; 105-449.44 through 105-449.45; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

.0402 AVERAGE MILES PER GALLON FACTORS

(a) The Department does not have the authority to grant carriers the privilege of basing their reports on an estimated miles per gallon factor.

(b) In the absence of records substantiating total miles and/or total fuel, audits will be based on average miles per gallon factors of other carriers with similar equipment and similar operations.

(c) The use of a miles per gallon factor on an audit is not an authorization for filing future reports on an average miles per gallon factor.

(d) Audits will be based on current information of carriers maintaining complete and accurate records as required by statute.

History Note: Statutory Authority G.S. 105-262; 105-449.44 through 105-449.45; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

SECTION .0500 - REGISTRATION CARDS AND IDENTIFICATION MARKERS

.0501 APPLICATION FOR VEHICLE REGISTRATION: FORM GAS. 1274

(a) Application for vehicle registration, Form Gas. 1274, is filed by operators of vehicles subject to the North Carolina Highway Fuel Use Tax Law. Applicants are issued a registration card and identification marker for each subject vehicle. There is no fee for the card and marker.

(b) The application must show the equipment number, make, serial number, state in which vehicle is licensed, type of vehicle (truck or bus), type of fuel used, and whether or not the motor carrier maintains storage of special fuels in North Carolina.

History Note: Statutory Authority G.S. 105-262; 105-449.3; 105-449.9; 105-449.32; 105-449.45; 105-449.47 through 105-449.48; 105-449.50; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

.0502 REGISTRATION OF HEAVY VEHICLES LICENSED IN NORTH CAROLINA

History Note: Statutory Authority G.S. 20-88.01; 105-262; 105-449.3; 105-449.9; 105-449.32; 105-449.45; 105-449.47; 105-449.48; 105-449.50; Eff. January 1, 1983; Amended Eff. May 1, 1987; March 1, 1987; Repealed Eff. February 1, 1990.

.0503 PERMITS: LEASES

(a) A lessee leasing units from other operators should not apply for the registration card and vehicle identification marker unless the lessor is leased to the lessee for a period of 30 days or more.

(b) A lessee who has obtained a registration card and vehicle identification marker for a vehicle under permanent lease must return the card and marker to the Motor Fuels Tax Division if the lease is cancelled for any reason.

History Note: Statutory Authority G.S. 105-262; 105-449.37; Eff. January 1, 1983; Amended Eff. February 1, 1990; March 1, 1987.

.0504 NO VEHICLE REGISTRATION REQUIRED

History Note: Statutory Authority G.S. 105-262; 105-449.47 through 105-449.49; Eff. January 1, 1983; Amended Eff. July 1, 1988; May 1, 1987; March 1, 1987; Repealed Eff. February 1, 1990.

.0506 DEALER: MANUFACTURER: DRIVEAWAY: TRANSPORTER

Persons operating heavy vehicles with a dealer, manufacturer, driveaway or transporter license

FINAL RULES

plate, issued either in North Carolina or other jurisdictions must obtain a fuel registration card, but not a vehicle identification marker, from the Motor Fuels Tax Division. There is no fee for the fuel registration card. These vehicles must have a fuel registration card at all times while operating in North Carolina.

*History Note: Statutory Authority G.S. 105-262;
105-449.45; 105-449.47; 105-449.48; 105-449.50;
Eff. March 1, 1987;
Amended Eff. February 1, 1990.*

FINAL RULES

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

FEBRUARY 1990

AGENCY	ACTION TAKEN
<u>DEPARTMENT OF CORRECTION</u>	
5 NCAC 2C .0101 .1002 .1002	Amended Amended Temp. Amended Expires 01-31-90
<u>STATE BOARD OF ELECTIONS</u>	
8 NCAC 1 .0004	Amended
<u>OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR</u>	
9 NCAC 2B Executive Order Number 101 Eff. December 21, 1989 Executive Order Number 102 Eff. December 21, 1989	
<u>DEPARTMENT OF HUMAN RESOURCES</u>	
10 NCAC 3G	Transferred and Recodified to 15A NCAC 11 Eff. January 4, 1990
3U .0203	Amended
4C .0302 - .0303	Amended
7A .0106 - .0107 .0209 .0405 .0504	Amended Amended Amended Adopted
7C .0204 .0205 .0601 - .0602 .0603 .0604 - .0608	Repealed Amended Amended Repealed Adopted
7G .0302 - .0303	Amended
8A .1202	Amended
8B .0110 - .0116 .0902 .0904 .0906	Amended Amended Amended Amended
8C .1106	Amended
8D .1105	Temp. Amended Expires 06-27-90
9D .0309 .0317	Amended Amended
10A .0443 .0444 .1935 .1937 - .1938	Amended Amended * Correction * Correction

FINAL RULES

	.1940 - .1941	* Correction
	.1944	* Correction
	.1946	* Correction
	.1948 - .1949	* Correction
	.1951 - .1952	* Correction
	.1954 - .1958	* Correction
	.1961	* Correction
18L	.1501 - .1524	Adopted
48A	.0101 - .0105	Repealed
	.0107 - .0108	Repealed
	.0201 - .0204	Repealed
	.0301 - .0303	Repealed
	.0401 - .0414	Adopted
	.0501 - .0514	Adopted
51D	.0107	Temp. Amended Expires 06-22-90

DEPARTMENT OF INSURANCE

11	NCAC	6B	.0102 - .0103	Amended
			.0105	Amended
			.0106 - .0107	Adopted
			.0201	Amended
			.0204 - .0205	Amended
			.0304	Amended
			.0401	Amended
			.0404 - .0405	Adopted
		10	.0602	Amended
		12	.0801 - .0814	Adopted

DEPARTMENT OF JUSTICE

12	NCAC	7D	.0401	Amended
			.0701	Amended
			.0706	Amended
			.0801	Amended
			.0803	Amended
			.0806 - .0807	Amended

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	3A	.0001	Amended
			.0004	Amended
		3B	.0113	Amended
			.0903	Amended
			.0906	Amended
			.1103	Amended
			.1107	Amended
			.1111	Amended
			.1601	Amended
			.1603 - .1604	Amended
		3F	.0106	Amended
		10B	.0105	Amended
			.0118	Amended
		10C	.0305	Amended
		10F	.0308	Amended
			.0345	Amended
		10J	.0001 - .0004	Adopted

FINAL RULES

DEPARTMENT OF REVENUE

17	NCAC	9F	.0001	Amended
			.0003	Amended
		9I	.0102 - .0103	Amended
			.0201 - .0202	Amended
			.0302	Amended
			.0401 - .0402	Amended
			.0501	Amended
			.0502	Repealed
			.0503	Amended
			.0504	Repealed
			.0506	Amended

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14M	.0018 - .0023	Adopted
			.0025 - .0034	Adopted

BOARD OF DENTAL EXAMINERS

21	NCAC	16Q	.0101	Adopted
			.0201 - .0205	Adopted
			.0301 - .0303	Adopted
			.0401 - .0403	Adopted
			.0501 - .0502	Adopted
			.0601	Adopted

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21	NCAC	18B	.0103	Amended
			.0201	Amended
			.0208	Amended
			.0301	Amended
			.0303	Amended
			.0306	Amended
			.0401	Amended
			.0403	Amended
			.0405 - .0406	Amended
			.0502 - .0505	Amended
			.0601	Amended
			.0702 - .0703	Amended
			.0801	Amended
			.0809	Amended
			.0901 - .0903	Amended
			.0905 - .0906	Amended
			.1001 - .1002	Amended

BOARD OF REGISTRATION FOR FORESTERS

21	NCAC	20	.0006	Amended
			.0014	Amended

DEPARTMENT OF COMMUNITY COLLEGES

23	NCAC	2C	.0604	Adopted
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TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Economic and Community Development, Department of
5	Correction, 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
14.A	Crime Control and Public Safety, Department of
15.A	Environment, Health, and Natural Resources, Department of
16	Public Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19.A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

CHAPTER	LICENSING BOARDS
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General 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	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy Examiners, Board 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
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

CUMULATIVE INDEX

CUMULATIVE INDEX
(April 1989 - March 1990)

1989 - 1990

Pages	Issue
1 - 151.....	1- April
152 - 192.....	2- April
193 - 216.....	3- May
217 - 289.....	4- May
290 - 311.....	5- June
312 - 364.....	6- June
365 - 454.....	7- July
455 - 477.....	8- July
478 - 521.....	9- August
522 - 584.....	10- August
585 - 616.....	11- September
617 - 658.....	12- September
659 - 712.....	13- October
713 - 765.....	14- October
766 - 801.....	15- November
802 - 825.....	16- November
826 - 856.....	17- December
857 - 891.....	18- December
892 - 929.....	19- January
930 - 1020.....	20- January
1021 - 1105.....	21- February

- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

ADMINISTRATION

State Construction, 827 PR

ADMINISTRATIVE HEARINGS

General, 879 PR

Hearings Division, 880 PR

Rules Division, 880 PR

ADMINISTRATIVE ORDER

Administrative Order, 4, 152, 802

AGRICULTURE

Cotton Warehouse, 220 PR
Gasoline and Oil Inspection Board, 931 PR
Markets, 217 PR, 546 PR
Pesticide Board, 292 PR
Plant Conservation Board, 196 PR
Plant Industry, 153 PR, 218 PR, 895 PR
State Fair, 217 PR

COMMUNITY COLLEGES

Board of Community Colleges, 352 PR

CORRECTION

Departmental Rules, 815 FR
Division of Prisons, 472 FR, 646 FR, 759 FR, 817 FR, 883 FR, 1007 FR

CRIME CONTROL AND PUBLIC SAFETY

Victim and Justice Services, 573 PR

CULTURAL RESOURCES

Archives and History, 370 PR, 455 PR, 593 PR, 720 PR
Arts Council, 371 PR
U.S.S. North Carolina Battleship Commission, 548 PR

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission, 1023 PR
Cemetery Commission, 198 PR, 766 PR
Community Assistance, 858 PR
Credit Union, 1026 PR
Departmental Rules, 901 PR
Finance Center, 368 PR
Hazardous Waste Management Commission, 716 PR, 834 PR
Milk Commission, 455 PR, 834 PR
Seafood Industrial Park Authority, 806 PR

EDUCATION

Elementary and Secondary Education, 253 PR, 295 PR, 511 PR, 739 PR, 843 PR

ELECTIONS, STATE BOARD OF

Departmental Rules, 661 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 239 PR, 508 PR, 574 PR, 735 PR, 1078 PR
Community Assistance, 134 PR
Departmental Rules, 601 PR
Economic Opportunity, 178 PR
Environmental Management, 18 PR, 160 PR, 202 PR, 238 PR, 295 PR, 347 PR,
431 PR, 456 PR, 700 PR, 730 PR, 866 PR, 992 PR, 1072 PR
Governor's Waste Management Board, 617 C
Land Resources, 868 PR
Marine Fisheries, 47 PR, 457 PR, 866 PR
Wildlife Resources and Water Safety, 134 PR, 178 PR, 207 PR, 252 PR, 574 PR,
700 PR, 738 PR, 776 PR, 809 PR, 872 PR, 903 PR

FINAL DECISION LETTERS

Voting Rights Act, 5, 193, 367, 523, 587, 618, 659, 714, 803, 857, 1022

FINAL RULES

CUMULATIVE INDEX

List of Rules Codified, 183 FR, 274 FR, 303 FR, 445 FR, 515 FR, 609 FR, 704 FR, 788 FR, 847 FR, 1009 FR, 1097 FR

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 290, 312, 365, 478, 522, 585, 713, 826, 892, 930, 1021

HUMAN RESOURCES

Aging, Division of, 859 PR
Departmental Rules, 372 PR
Economic Opportunity, Division of, 1070 PR
Employment Programs, 1062 PR
Facility Services, 199 PR, 377 PR, 594 PR, 1029 PR
Governor's Waste Management Board, 552 PR
Health Services, 153 PR, 315 PR, 405 PR, 661 PR, 933 PR
Individual and Family Support, 1063 PR
Medical Assistance, 158 PR, 294 PR, 455 PR, 549 PR, 601 PR, 620 PR, 722 PR, 808 PR, 1068 PR
Mental Health, Mental Retardation and Substance Abuse Services, 17 PR, 417 PR, 685 PR, 960 PR
Services for the Blind, 1067 PR
Social Services, 550 PR, 773 PR
Vocational Rehabilitation Services, 7 PR, 766 PR
Water Treatment Facility Operators Board of Certification, 549 PR

INDEPENDENT AGENCIES

Housing Finance Agency, 459 PR

INSURANCE

Admission Requirements, 836 PR
Agent Services Division, 561 PR
Engineering and Building Codes, 775 PR, 1071 PR
Fire and Casualty Division, 202 PR, 479 PR, 689 PR, 986 PR
Life, Accident and Health Division, 690 PR

JUSTICE

Alarm Systems Licensing Board, 991 PR
Criminal Justice Education and Training Standards Commission, 569 PR, 860 PR
Private Protective Services Board, 621 PR, 990 PR
Sheriff's Education and Training Standards Division, 491 PR

LICENSING BOARDS

Architecture, 349 PR
CPA Examiners, 458 PR, 810 PR
Electrical Contractors, 741 PR
General Contractors, 512 PR, 844 PR
Geologists, Board for Licensing of, 878 PR
Landscape Architects, 443 PR, 756 PR
Medical Examiners, Board of, 604 PR, 701 PR, 1081 PR
North Carolina Certification Board for Social Work, 179 PR
Nursing, Board of, 296 PR, 778 PR
Pharmacy, Board of, 1087 PR
Physical Therapy Examiners, 262 PR
Plumbing and Heating Contractors, 757 PR
Practicing Psychologists, 606 PR
Real Estate Commission, 993 PR
Sanitarian Examiners, Board of, 785 PR

REVENUE

Departmental Rules, 885 FR
Motor Fuels Tax Division, 1093 FR
Sales and Use Tax, 353 FR

CUMULATIVE INDEX

STATE PERSONNEL

State Personnel Commission, 181 PR, 210 PR, 265 PR, 461 PR, 624 PR, 786 PR, 923 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 524 SO

TRANSPORTATION

Division of Motor Vehicles, 140 FR, 607 FR, 648 FR

NOW AVAILABLE

NORTH CAROLINA ADMINISTRATIVE CODE

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 are available at one-half the new subscription price.

PRICE LIST FOR THE SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 52	Full Code		All titles	\$750.00		
1	1	1 - 37	Administration	90.00		
2	2	1 - 24	Agriculture	75.00		
3	2	25 - 52	Agriculture	75.00		
4	3	1 - 4	Auditor	10.00		
5	4	1 - 2	ECD (includes ABC)	45.00		
6	4	3 - 20	ECD	90.00		
7	5	1 - 2	Correction	60.00		
8	5	3 - 4	Correction	30.00		
9	6	1 - 4	Council of State			
	7	1 - 11	Cultural Resources	60.00		
10	8	1 - 9	Elections	10.00		
11	9	1 - 4	Governor	45.00		
12	10	1 - 2	Human Resources	30.00		
13	10	3A - 3K	Human Resources	90.00		
14	10	3L - 3R	Human Resources (includes CON)	45.00		
15	10	3S - 3U	Human Resources	30.00		
16	10	4 - 6	Human Resources	30.00		
17	10	7	Human Resources (includes Breathalyzer)	30.00		
18	10	8 - 9	Human Resources	60.00		
19	10	10	Human Resources	90.00		
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